

REPORTER'S RECORD
VOLUME 44 OF 50 VOLUMES
TRIAL COURT CAUSE NO. 588227
COURT OF CRIMINAL APPEALS CASE NO. AP-76,769

THE STATE OF TEXAS) IN THE DISTRICT COURT
)
VS.) HARRIS COUNTY, TEXAS
)
CARL WAYNE BUNTION) 178TH JUDICIAL DISTRICT

TRIAL PROCEEDINGS

FILED IN
COURT OF CRIMINAL APPEALS

NOV 14 2012

Louise Pearson, Clerk

On the 5th day of March, 2012, the
following proceedings came on to be heard in the
above-titled and numbered cause before the Honorable
David L. Mendoza, Judge Presiding, held in Houston,
Harris County, Texas.

Proceedings reported by stenotype machine;
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TAMMY L. ADAMS, CSR
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178TH DISTRICT COURT

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KEY WORD INDEX

1 (Proceedings.)

2 THE COURT: Be seated, please. Good
3 morning.

4 MR. KEIRNAN: Morning, Your Honor.

5 THE COURT: This is Cause No. 588227,
6 State of Texas versus Carl Wayne Buntion. The record
7 will reflect today's date is March the 5th, 2012.

8 Both sides ready?

9 MR. KEIRNAN: Yes, Your Honor.

10 MR. SCARDINO: Yes, sir. And we have
11 the defendant in --

12 THE BAILIFF: He's coming.

13 MR. LONG: And the State's ready.

14 THE COURT: And folks in the audience,
15 if you would, kind of scoot a little bit; if you can
16 scoot a little bit. I know two person rows are --
17 don't leave much room. But some of the longer rows
18 may allow another person or two to sit in there, but
19 just do what's comfortable; but we're under capacity
20 requirements here.

21 All right. Both sides ready?

22 MR. SCARDINO: Yes, sir.

23 MR. LONG: Yes, sir.

24 MR. KEIRNAN: Yes, Your Honor.

25 THE COURT: All right. Thank you. Do

1 both sides have a copy of the Court's charge to the
2 jury in its final form?

3 MR. KEIRNAN: Defense has a copy, Your
4 Honor.

5 MR. LONG: State has a copy.

6 THE COURT: Any additional objections
7 or requests, other than those already made?

8 MR. KEIRNAN: None, Your Honor.

9 MS. DOZIER: No, Your Honor.

10 THE COURT: All right. Thank you.

11 Both sides ready for the jury?

12 MS. DOZIER: Yes, Your Honor.

13 MR. KEIRNAN: Yes, Your Honor.

14 THE COURT: All right. Bring them in,
15 please.

16 MR. LONG: Just for your --
17 Ms. Dozier's going to argue first, then I'll go last.

18 THE COURT: Anybody want a five minute
19 warning?

20 MR. KEIRNAN: From infinity?

21 MR. SCARDINO: There's no time limit
22 though, right?

23 MR. KEIRNAN: We won't take long,
24 Judge.

25 THE COURT: Equal amount of time both

1 sides.

2 MR. KEIRNAN: Yes, sir.

3 THE COURT: We discussed time limits
4 last week. Those still stand.

5 MR. SCARDINO: Yes, sir.

6 THE COURT: Which were --

7 MR. SCARDINO: Reasonable amount.

8 THE COURT: -- reasonable.

9 MR. SCARDINO: Yes, sir.

10 THE BAILIFF: All rise for the jury.

11 (Jury Panel enters courtroom.)

12 (Open court; defendant and jury panel
13 present.)

14 THE COURT: Be seated, please.

15 Good morning, members of the jury.

16 JURY PANEL: Morning.

17 THE COURT: It now becomes my duty to
18 read to you the Court's charge that will contain all
19 the law that applies in this case. You have a copy
20 there. If you would, you could read along if you
21 care to.

22 (Court reads charge.)

23 THE COURT: Both sides have an equal
24 amount of time to summarize the evidence. State has
25 a right to proceed in opening -- summarization of the

1 evidence first.

2 What says the State?

3 MS. DOZIER: State's ready, Your Honor.

4 THE COURT: All right. Ms. Dozier, you
5 may proceed.

6 **STATE'S CLOSING STATEMENT**

7 MS. DOZIER: The killing of Officer
8 James Irby was cold-blooded and premeditated. Not in
9 the sense that this defendant thought out and planned
10 in advance about specifically killing James Irby, but
11 that he planned and prepared for the opportunity to
12 kill any police officer who happened to cross his
13 path. And on June 27th, 1990, James Irby was that
14 unlucky and unsuspecting victim.

15 There was nothing emotionally charged
16 about the situation in the beginning. It was a
17 traffic stop. A routine traffic stop, where the
18 defendant wasn't even involved other than the fact
19 that he happened to be a passenger in a vehicle that
20 was stopped. You heard from the witnesses, about how
21 Officer Irby was interacting with Johnny
22 Killingsworth. How they were out on the side of the
23 car and they were talking to each other. About how
24 the officer was polite and professional. About how
25 while they were talking, witnesses saw that they

1 appeared to be smiling and that there was nothing
2 going on wrong. As a matter of fact, you heard from
3 Sherrie Hayes about the defendant -- about how Johnny
4 Killingsworth looked like he was trying to talk
5 himself out of a traffic ticket.

6 Nothing was going wrong at that point.
7 The defendant didn't jump out of the car in a panic
8 and automatically shoot Officer Irby. No, he sat
9 there and thought about what he was going to do. He
10 sat there in that car with a .357 caliber weapon,
11 loaded with hollow point bullets, the type that are
12 designed to do the maximum damage. And after several
13 minutes of sitting there, he decided to get out of
14 the car.

15 Stepped out not, again, in a panic,
16 walked to the back of the car so that he could get
17 closer to where Officer Irby was. And when he got to
18 that point in the car where the top sloped down back
19 towards the trunk, he pivoted, pointed the gun and
20 fired, sending a bullet ripping through Officer
21 Irby's helmet and into his brain.

22 We know that Officer Irby had just a
23 split second when he saw that gun coming over the
24 car, because my most witnesses' accounts, he looked
25 like he was reaching for his gun to defend himself

1 from this criminal.

2 Not one witness actually saw the gun in
3 Officer Irby's hand, but we know that he must have
4 been trying to save his own life at that point,
5 because of the angle of the bullet in his head. Just
6 glancing down towards his holster and, you know, the
7 angle of the bullet was in an upward direction, which
8 would be consistent with him trying to get to his
9 gun. And he must have gotten it loose, because when
10 Mr. Castillo came up on him it was out on the ground.

11 Was the defendant in a panic then? No.
12 You heard what the witnesses said, after firing the
13 gun over the top of the car, he didn't run, he didn't
14 run in a panic away around the car. He walked slowly
15 to the front of the car, positioned himself, readied
16 himself, took aim and fired, and put two more bullets
17 in Officer Irby's back. Why did he do that? Officer
18 Irby was down. He wasn't a threat at that point.
19 Because this man wanted Officer Irby dead.

20 Was the defendant's conduct that caused
21 the death of James Irby committed deliberately and
22 with the reasonable expectation that the death of
23 James Irby would result? Undoubtedly, the answer to
24 Special Issue Number One is "yes."

25 Special Issue Number Two: Do you find

1 from the evidence beyond a reasonable doubt there is
2 a probability that the defendant, Carl Wayne Buntion,
3 would commit criminal acts of violence that would
4 constitute a continuing threat to society?

5 I would submit to you that this crime
6 by itself answers that question for you. It's a
7 string of senseless violent acts, one right after
8 another. It did not end with this man putting three
9 bullets in Officer Irby's body; but continued all the
10 way down Lyerly, down to Pony Express. Anyone who
11 can gun down a police officer in broad daylight, in
12 front of all of those people and then try and kill a
13 witness, shoot at another police officer, try and
14 carjack somebody on Lyerly and then rundown to the
15 Pony Express and try and take a man's wallet and car
16 at gunpoint. And then when the nice Pony Express
17 courier asked, "May I help you," he points the gun at
18 him, too. Anyone can -- who can commit that crime,
19 is a continuing threat to society.

20 This crime is mind-boggling. And, you
21 know, we're lucky that it's not more of a tragedy
22 than it already is. Because if you think about it,
23 if Theresa Clerkley hadn't been pushed down in the
24 front of that car seat by her cousin when she was,
25 she'd have more than just a bullet in her shoulder.

1 Go back and look at that scene video,
2 and look at the trajectory of that bullet as it tore
3 through the windshield and where it went, straight
4 through the center of the passenger seat of that blue
5 Mazda. Just like those women told you, how he got
6 down and took aim, the officers told you that the
7 trajectory of the bullet appears to be in an upward
8 direction, smashing through the bottom of the
9 windshield and right through the center of that
10 passenger seat. We're lucky that this wasn't a lot
11 worse than it was. And we're lucky that those
12 witnesses out there kept their heads, keeping the
13 situation from being even more tragic.

14 Because you remember what Mr. Castillo
15 said, when he saw the defendant shooting Officer
16 Irby, at first he was shocked and stunned. He
17 thought they must be filming a movie, this cannot be
18 happening in front of me. And then when he realized
19 that it was happening, he tried to do something to
20 help Officer Irby. He tried to stop the defendant.
21 He pulled his truck out of that parking lot, tore
22 across street and was going to try and pin this man
23 between his truck and Johnny Killingsworth's car.
24 But by the time he got there, the defendant was
25 already out on Lyerly and running down the street and

1 causing more mayhem and more havoc.

2 And Mr. Castillo told you, he went over
3 to Officer Irby, "Hey, man, are you okay?" No
4 response. And he sees Officer Irby's gun on the
5 parking lot there and picks it up and goes down to go
6 after the defendant. But he doesn't shoot. Why?
7 Because he's concerned about the safety of the other
8 people out there on Lyerly Street.

9 What about Deputy Anthony Lemon? Think
10 about the situation he got himself put into. Rolls
11 up on this scene, there's an officer been shot,
12 there's people running around. He's a deputy, but
13 he's in plain clothes. He's got his gun, he's told
14 the direction the defendant went and he goes running
15 down to that warehouse to try and apprehend this man,
16 and then realizes the dangerous position that he's
17 in. Because what if responding officers see him
18 standing there in plain clothes, holding a gun and
19 think he's the killer. We're lucky that those people
20 kept their heads.

21 The defendant says in one of his
22 letters, "Those people think that they're heroes and
23 they're going to get their five minutes of fame in
24 the spotlight. Well, Mr. Buntion, those people are
25 heroes. That they kept their heads and kept this

1 from being much more tragic than it -- than it
2 already was and for trying to help a fallen officer.

3 I expect that the defense will concede
4 that this was a horrific crime. But then they'll
5 tell you instead, when you're answering this Special
6 Issue Number Two, look at the defendant's last 21
7 years while he's been on death row. Look at what he
8 hasn't done.

9 Well, so let's talk about death row for
10 a minute then. Think about what you heard about
11 death row. Single cells. Each person is in a cell
12 by themselves. They have a solid metal door between
13 them and the rest of humanity. Anytime they're going
14 to be brought out, they're handcuffed behind their
15 backs. But not with the door open. They have to put
16 their hands in through a bean shoot and they're
17 handcuffed. And then and only then do the guards
18 open the doors and shackle their legs.

19 And you heard, too, that when they're
20 dealing with an inmate on death row, it's always at
21 least two guards dealing with them.

22 Is it impossible to get in trouble on
23 death row? No. But most of their opportunities have
24 been taken away. You know, if I had a dangerous dog,
25 and I muzzled them and I chained them, and then I

1 told you, "Well, he hasn't bitten anybody, so he's
2 not dangerous anymore," would you buy that? You
3 wouldn't. It's because the opportunities have been
4 taken away. The defendant has not changed, just his
5 opportunities have been taken away.

6 So I say to you, instead of looking at
7 all the things that he hasn't done, let's look at the
8 things that he has done. What things do we know
9 about the defendant when he's had the opportunity.
10 He's a 13-time convicted felon. If you count this
11 offense, 14. He's spent more than half of his life
12 in prison for the choices that he has made. Not
13 others have made for him, the choices that he has
14 made.

15 While in custody in Alabama, when he
16 was 21 years old, he stabbed a deputy sheriff in the
17 chest with a piece of glass. Or he sliced the
18 deputy's neck with the glass, depending on which of
19 the defendant's accounts you choose to believe. And
20 was convicted of that offense of assault to murder.

21 When he was 26 years old, he shot up a
22 man's car after getting into an argument with the car
23 owner. And you can read about that in his prison
24 records.

25 When he was almost 40 years old, he ran

1 a man down while stealing a car off of a sales lot.

2 He was caught with a knife in his cell
3 in one of his prison trips.

4 When he was 43 years old, he sexually
5 assaulted a 15-year-old girl.

6 And when he was 46 years old, and on
7 parole for less than two months for that sexual
8 assault, he's out there running around with a .357
9 caliber weapon, loaded with hollow point bullets and
10 he shoots and kills Officer Irby. And then he shoots
11 Theresa Clerkley. And then he shoots at Officer
12 Ramsey. And then he tries to take Alex Crawford's
13 car and wallet at gunpoint. And that's just to
14 mention a few of the people that he came into
15 contact, as he continued that crime spree down
16 Lysterly.

17 Does that sound like somebody that's
18 going to be a future danger? Absolutely. The answer
19 to Special Issue Number Two is "yes."

20 Special Issue Number Three: Do you
21 find from the evidence beyond a reasonable doubt that
22 the conduct of the defendant, Carl Wayne Buntion, in
23 killing James Irby, was unreasonable in response to
24 the provocation, if any, by James Irby?

25 The answer to this question, obviously

1 "yes." You didn't hear about any provocation from
2 Officer James Irby. And the only reason that this
3 issue was submitted to you, was because of the
4 defendant's claims in his prison record and also that
5 -- our interview that he gave to Phil Archer, where
6 he claimed that Officer Irby was going to kill him.
7 And he was only acting in self-defense. It was
8 self-preservation on his behalf. You heard from all
9 of the other witnesses that Officer Irby did
10 absolutely nothing to this man, other than waive him
11 back in the car, "Go ahead and get back in the car,"
12 And that's it. The answer to this question is
13 obviously, "Yes, the defendant did act unreasonably,
14 when he put a bullet in Officer Irby's head and two
15 in his back."

16 Special Issue Number Four: Is there
17 anything sufficiently mitigating to warrant that a
18 sentence of life imprisonment rather than a death
19 sentence be imposed?

20 And you know from when we -- our
21 conversations on voir dire, that you are -- when you
22 answer this question, you're to look at all of the
23 evidence presented during the trial. Including the
24 circumstances of the offense, the defendant's
25 character and background and the personal moral

1 culpability of the defendant.

2 So what are the circumstances of the
3 offense? It was a cold-blooded, premeditated murder.
4 The defendant had thought about and planned and
5 prepared for what he would do when he came into
6 contact with any police officer. Even if it was just
7 a traffic stop. He carried a .357 caliber revolver,
8 fully loaded, so that he was prepared to carry out
9 his plan whenever he deemed it necessary.

10 He was on parole for sexual assault of
11 a child. He had been out on parole for less than two
12 months. A felon is not supposed to be carrying a
13 weapon and certainly not while they're out on parole.

14 He didn't even know Officer Irby and
15 Officer Irby had never done him any wrong. They had
16 no previous relationship. The defendant killed a
17 police officer, he killed a father, and he killed a
18 husband, so that he wouldn't go back to prison.

19 You know, if he had reported to the
20 halfway house after he was released on parole, like
21 he was supposed to and if he wasn't running around
22 carrying a weapon, he would have had absolutely
23 nothing to fear from any police officer. Because he
24 wouldn't have been violating his parole. But because
25 of choices he made, he put himself in that position

1 that day. If he had just made the right choice when
2 he got out of prison and reported like he was
3 supposed to and not run around with -- carrying a
4 gun, he wouldn't have been in that position.

5 But even then, on June 27th, 1990, he
6 had the opportunity to make the right choice and,
7 again, he chose not to.

8 He could have slipped the gun out and
9 put it under the seat of the car. When he got out of
10 the car he could have dropped it. He could have
11 taken off running in the opposite direction from
12 Officer Irby, but no instead, he chose to walk down
13 the side of the car, to get himself in a good
14 position, turn and shoot Officer Irby in the head.
15 And why? Because he didn't want to go back to
16 prison. His freedom was more valuable than another
17 man's life. More valuable than a family's father,
18 more valuable than a woman's husband.

19 It was unjustified, cold-blooded,
20 senseless, mind-boggling. And that just describes
21 what he did to Officer Irby. And then we go on from
22 there as he travels on down Lyerly and victimizes
23 everybody else that he comes into contact with.

24 Now, I'm sure the defense will point
25 out to you, that he could have shot at Officer

1 Kalich, when Officer Kalich came down to the
2 warehouse to arrest him. But let's think about that
3 for a moment. We know that the defendant had one
4 bullet left in that gun. One. And what happens if
5 he misses when he shoots at Officer Kalich. Officer
6 Kalich would have been completely and totally
7 justified at that point, in emptying his gun at the
8 defendant.

9 And we know one thing about the
10 defendant, he cares about one person, and that's
11 himself. And under those circumstances it would have
12 been suicide for him to fire at Officer Kalich, and
13 his life was the one life he was not willing to risk.
14 Because, again, he cares about himself and only
15 himself.

16 He surrendered when he did, because he
17 no longer had the upper hand and because it was in
18 his best interest.

19 What do we know about the defendant's
20 background and character? Well, if you believe
21 Bobby Buntion, the defendant had a pretty rough
22 upbringing. Of course, you also heard Bobby Buntion
23 admit to you that he did a lot of head running about
24 a whole lot of things. Fancy term for lying. But
25 even so, the defendant's childhood wasn't a whole lot

1 different from his friend, Larry Hunter, who came in
2 here and testified. And it certainly doesn't justify
3 abuse at the hands of their father. Child abuse is
4 not ever a good thing. But there are plenty of
5 people who have been abused as children, who've not
6 grown up to be convicts, who've not grown up to be
7 sex offenders, and who've not grown up to be capital
8 murderers. And that's because we each have the
9 opportunity to make choices for ourselves.

10 As a matter of fact, if you think about
11 it, Larry Hunter had a lot of similar parallels to
12 the defendant. Grew up in the same neighborhood,
13 they knew each other, they played together, both
14 dropped out of school. What did Larry Hunter do with
15 his life? He went on to become a captain with the
16 fire department. Which just goes to show that
17 everybody gets to choose for themselves what they
18 will do and how they will act and how they will react
19 in certain situations. And that will help determine
20 what type of life they lead.

21 If you think about it, you heard a
22 little bit about Rita Buntion, the defendant's own
23 sister. Raised in the same household, raised by the
24 same parents. She turned out all right. It's because
25 we have the ability to make our own decisions, which

1 in turn determine the type of lives that we will
2 lead.

3 Well, what else do we know about this
4 defendant's character and background? We know about
5 his criminal history, about his 13 prior felony
6 convictions and we know that he does not always
7 accept responsibility for his actions. Do you
8 remember the testimony of Johnny Scott, the
9 defendant -- the person the defendant almost ran down
10 when stealing a car from a car lot? If you go back
11 and look in the defendant's prison records, you'll
12 see when the defendant was interviewed about that, he
13 claimed he didn't even know the car was stolen. He
14 almost ran a man down and was trying to run the story
15 by the prison officials, that he didn't even know the
16 car was stolen.

17 We know that he's used multiple aliases
18 in the past, in an effort to avoid detection. We
19 know that he let his own brother go to prison for his
20 very first felony conviction, for a crime that he
21 committed. And lo these many years have gone by and
22 he finally apologized to him. "Hey, Little Brother,
23 sorry I let you take that one for me."

24 We know he talks a good game about God
25 when his friend from the ministry come around. But

1 then he shows his true colors when he writes his
2 brother. You remember the bile and vitriol that you
3 heard in those letters. And you can take them back
4 and read it. There's a lot more in there, too. He
5 shows his true colors about who he really is. And we
6 know that he values his freedom more than he values
7 any other human being's life.

8 What about his personal moral
9 culpability? That was an issue that we talked about
10 on voir dire with each one of. And we talked about
11 how that was an important factor. What do we know
12 about what his personal moral culpability is in the
13 commission of this crime?

14 He is personally responsible for the
15 death of James Irby. No one put him up to it, nobody
16 else encouraged him to do it. He acted alone each
17 and every time that .357 was fired out there, the
18 night of June the 27th of 1990, the defendant pulled
19 the trigger. No one else.

20 If you look in his prison records, he's
21 got an IQ of 103. He is not mentally deficient. His
22 motive was to avoid police interaction, which would
23 result in him being identified and arrested and sent
24 back to prison. And he did not care how that
25 happened. He did not care who had to lie on the

1 ground out there that night, as long as he was free.

2 He made the choice to skip out on the
3 halfway house. He made the choice to carry a loaded
4 firearm and carry it with him at all times, so that
5 he could be prepared for any situation involving the
6 police. He made the choice to get out of the car.
7 He made the choice to kill Officer Irby and he did it
8 in cold-blood. He made the choice to continue the
9 crime spree after that, until he was cornered down
10 there in the warehouse. And now he has to live with
11 the consequences of those choices that he made.

12 There's nothing about the crime,
13 circumstances of the crime, nothing about the
14 defendant's character and background, and certainly
15 nothing about his personal moral culpability that is
16 sufficiently mitigating to warrant that he get a life
17 sentence rather than a death sentence. He should
18 have to pay the ultimate price for his crime.

19 You know, we are free to make our
20 choices, but we are not free to choose the
21 consequences of those choices. We knew when we
22 talked to each of you individually in voir dire, that
23 we would be asking you to answer these special issues
24 in such a way that this man would receive a death
25 sentence. And we do that now. We don't ask for it

1 lightly, without a careful consideration about all of
2 the facts that you know of right now.

3 It would be nice if we lived in a world
4 where these types of things didn't happen and we
5 didn't need the death penalty, but we don't live in
6 that perfect world and we know these horrible crimes
7 happen.

8 During voir dire, the defense counsel
9 suggested to some of you that if this man is
10 executed, the decision and responsibility belongs to
11 the jury. Well, I'm here to tell you that that's not
12 true. You didn't ask to be here the last several
13 weeks. You didn't ask to have to sit here, give up
14 your personal time, suffer through some of your
15 personal tragedies. You didn't ask to sit in that
16 box and hear about all the horrible crimes that this
17 man has committed and the horrible thing that he's
18 done. And the way that he treated Officer Irby that
19 night and the way he shot Theresa Clerkley. You
20 didn't ask to sit in that box. The defendant put you
21 in that box by his choices.

22 The Irby family has had to struggle
23 with the loss of a father and the loss of a husband
24 for the last 21 years, 8 months, and 7 days, because
25 of the choices of this man. And they'll continue to

1 suffer because of the choices of this man.

2 The defendant made the choices that led
3 him to the courtroom today, so don't let him lay the
4 guilt trip on you. He had a choice each and every
5 time, and each and every time he made a bad choice.
6 The defendant, by his acts, words, deeds, conduct and
7 choices, answers each of those special issues for
8 you. Although it may be your handwriting on the
9 verdict form, the defendant has authored the answers
10 to each one of those special issues.

11 You know, every day we read in the
12 paper and we see on the news, the horrible crimes
13 that go on in our community around us and we ask
14 ourselves, when is somebody to do something about
15 that? Well, today you are that somebody. Today you
16 get to stand as the conscience of our community. You
17 get to stand up for the Irby family, and you get to
18 stand up for each one of those men and women in blue,
19 who go out everyday to serve and protect us.

20 Because everyday when they go out, they
21 put on that uniform, they put in their badge to their
22 chest, and they know that they may not come home that
23 night. The Irby family knew that. But it was an
24 honor to serve and protect those in our community.

25 And though that job may be routine on a

1 day-to-day basis, when a cold and senseless and
2 brutal crime like this happens, it just brings it
3 again to the forefront that risk that they take every
4 single day, when they walk out of their homes. They
5 may not see their families again. They may not have
6 that opportunity to say good-bye, to make amends, to
7 tell their family one more time that they love them.

8 Today you have a unique opportunity.
9 You have the opportunity to stand and serve for them.
10 You 12 have the opportunity to tell the police today,
11 "We've got your backs. Today we serve you."

12 Your verdict should be one where you
13 look at Maura Irby and you can look at Cally Irby and
14 you can look at Cody Irby, and tell them, "We did the
15 right thing."

16 The defendant has signed his own death
17 warrant, he chose to commit this awful crime. Don't
18 let him choose the consequences.

19 THE COURT: Thank you, Ms. Dozier.

20 What says defense?

21 MR. SCARDINO: May I, Your Honor?

22 THE COURT: You may proceed,
23 Mr. Scardino.

24 MR. SCARDINO: Thank you.

25 **DEFENSE'S CLOSING STATEMENT**

1 MR. SCARDINO: How are y'all doing?

2 JURY PANEL: Good.

3 MR. SCARDINO: I'd like to start by
4 thanking you all. That it has been a long time; it
5 has been a long trial. I'd like to acknowledge
6 everyone that's here in the audience, my co-counsel,
7 thank the Judge for being a good judge during all
8 this and keeping us all in line. I appreciate the
9 law enforcement people being in here. I appreciate
10 the police and what they do. We all should. They
11 have a very integral, important job and are part of
12 the criminal justice system. So is the jury. So is
13 the Judge. So are the defense lawyers and the
14 prosecutors.

15 Some really smart guys set this up for
16 us a couple hundred years ago. Actually it was just
17 one guy. But they set it up and it works. And it
18 works only if each one of those elements does their
19 job. And the prosecutor got up here just a while ago
20 and asked you to violate that job, all right?

21 So what is your job? Your job is to be
22 the jury. And as long as you do that job
23 everything's all right. If the police start trying
24 to be the jury, it's not going to work. If the Judge
25 tried to be the prosecutor, it's not going to work.

1 It only works if we do our jobs. And it's a great
2 thing. It's a great thing we live in a country where
3 we have that system.

4 So when the prosecutor got up here and
5 said, "Oh, you better have the cops backs." That's
6 not what you do. We appreciate what they do. We all
7 do. It's a brave and noble thing that they do. But
8 you're not the police today, you're the jury. And if
9 you let them talk you into being the police, then
10 you're not going to be doing your job.

11 So, I know you will because I talked to
12 every one of you before this started, or most of you.
13 Let me talk to you a little bit, and I'll try to be
14 brief. I've got some real bad news for you. Like
15 the Judge said, we could have a talk for a reasonable
16 amount of time. But for lawyers sometime that's not
17 too reasonable. But I'm not going to waste anymore
18 of your time that's already been wasted. I talked
19 about that when we started this, that this case is
20 pretty much a waste of time, because it didn't have
21 to happen at all. If you remember that.

22 It's only happening and she said, "Oh,
23 he put you here. They put you here. They're the
24 ones seeking the death penalty. Remember when we
25 talked about when we started? It's a life sentence

1 to start with. You got to remember what we're doing
2 here. We're not deciding whether this crime actually
3 happened or not. It did. That's not what we're here
4 to do. We're here to do one thing today. And after
5 all this evidence has been presented to you, is to
6 decide what happens to this man for the last few
7 years of his life. That's it.

8 We're not here to decide whether he's
9 guilty or not. He's guilty. Don't cheat yourself
10 out of this experience. It is unique. There's not
11 many folks get to sit as jurors in a capital murder
12 case. It's -- it's a very unique situation. It's
13 something that you'll never -- never -- you will
14 never have that experience again. So don't cheat
15 yourself out of it. Don't do something in this case.
16 Don't do something with your verdict that you don't
17 feel good about.

18 You're only supposed to go back there
19 and cast a verdict that you feel good about. And why
20 is that the case? Why is it a verdict that you feel
21 good about? Because if you don't feel good about it,
22 then that's reasonable doubt. Because if you've got
23 a problem of whether you think that I shouldn't have
24 done that, then that's what that is. Just what the
25 Judge tells you.

1 So at the end of this, go back there
2 and do that. Don't cheat yourself out of this
3 experience. I'll talk to you more about that in a
4 minute.

5 Let me talk about a couple of matters
6 before I talk to you about these issues.

7 One of them is, the Judge told you not
8 to consider the fact that the defendant did not
9 testify. We made that decision not to put him on the
10 witness stand. If you're going to hold it against
11 somebody, hold it against us. It's a piece of
12 negative evidence anyway, something you didn't hear.
13 Why would we put him on? We're going to -- we put
14 him on to -- to help prove up the fact that it wasn't
15 done deliberately? No. You already know that. We
16 put him on to prove that -- that there wasn't any
17 provocation. There wasn't.

18 This officer didn't provoke his own
19 death. I agree with them on that. He didn't provoke
20 his own death. Are we going to put him on to prove
21 that he's not a future danger? You already know
22 that. We already proved that to you. Are we going
23 to put him on to prove to you that he had an awful
24 upbringing, he had a monster for a dad? That he and
25 his brothers were born on this toxic thing, and all

1 grew up to be criminals? You already know that.

2 We've already told you that doesn't
3 justify what he did. It doesn't condone what he did.
4 It just gives you some explanation about why he did
5 it. Doesn't make it right. Remember what we're
6 doing here. We're not finding him guilty. We're
7 deciding what he does the last few yours of his life.

8 So why would I put him on? Why would I
9 put him on? So Prosecutor Long can sit there and jab
10 at him like a bug on the end of a pin and read his
11 letters and look at the jury and laugh? We don't
12 need that kind of dramatics or that kind of silliness
13 in the courtroom. This is serious business here.

14 All right. Let's talk about this
15 stuff. Let me get this stuff. Hold on a second.
16 All right. Let's talk about these things.

17 I thought it was pretty interesting
18 that the State changed their theory of the case,
19 again. Right as we started, she got up and changed
20 the theory again. The things that I told you were
21 true about this, that I told you were true before the
22 trial started, and they would be true during the
23 trial and they would be true at the end of the trial?
24 They're still true. Nothing has changed these
25 things. Nothing. Nothing has changed the answer to

1 this question. Not a single thing.

2 His age, years in prison, no criminal
3 acts of violence. Nothing has changed that from the
4 start. When this case started, Prosector Long got up
5 here and made an opening statement to you. Remember
6 that? It's some time ago, but he made one to you.
7 And I'll tell you what he told you.

8 He told you that -- that you're going
9 to hear from a witness, that if the defendant
10 receives a life sentence, he will no longer be housed
11 in that secured area of the prison, he will have the
12 second lowest classification in the system. The only
13 thing he won't be allowed to do is work outside the
14 prison walls. He'll be able to roam the prison
15 freely for the first time in 20 years.

16 He got up here and told you that. Got
17 right up here and told you that. Why would he do
18 that? There's no surprises in this case. They know
19 everything we know. And we know everything they
20 know. They knew we were going to call Vigen and
21 Woods a year ago. They've known all of that. Why
22 would they get up here, first rattle out of the box,
23 and get up here and risk losing all credibility with
24 you, by telling you something like that?

25 Did they call a single witness for

1 that? Not one. Not one single witness did they call
2 about him, where he would be in prison and what he'd
3 be doing while he was there. Not one. Not only did
4 they not call a witness, they told you something
5 that's completely and totally untrue. Why would they
6 do that? You need the ask yourself that. Why would
7 that do that?

8 There's only one reason for that. It's
9 to pedal this fear, that somehow my client is going
10 to be able to do something that would be a continuing
11 threat. That's all that is. Told you that knowing
12 they had nothing, zero, nada, told you that anyway.
13 It should concern you.

14 Let's talk about what you did see.
15 Let's talk about what you did hear. We brought you
16 some witnesses. We brought you witnesses. We
17 brought you correctional officers, we brought you
18 S.O. Woods and we brought you Dr. Mark Vigen. Smart
19 guy. I like Vigen myself. The -- we proved the
20 things that we talked to you about in this -- in this
21 question, about him -- will he be a future threat or
22 not, all right?

23 Let's first talk about what they told
24 you about him roaming the prison, okay? Because we
25 all kind of learned something about prison life,

1 didn't we, from hearing from these witnesses? The
2 first one, S.O. Woods. S.O. Woods ran the prison for
3 35 years. They wanted to get up here and say, "Oh,
4 he doesn't run it anymore, so what does that count
5 for." Look at every one of the penitentiary packets
6 that are proved up every time he's gone to the
7 penitentiary. Everyone of them, S.O. Woods is on it.
8 His name's on every one of them.

9 He told you how the prison system
10 works. And better than that, he told you that it
11 does work. He also told you something else very
12 interesting about this future dangerous question. He
13 told you that the first ten years that Carl Buntion
14 was on death row, was in the Ellis Unit. The first
15 ten years; he's been there 22. So the first ten, he
16 was on the Ellis Unit. And the Ellis unit as he told
17 you, was they shared cells, the bars were open. He
18 told you that Carl Buntion worked in one of the
19 factories. Worked around the machines, worked around
20 tools. Could have made weapons. Could have --
21 worked around all kinds of stuff like that.

22 And yet in those ten years, we see
23 nothing. Nothing. No criminal acts of violence.
24 Surely had opportunities to do it there. But then it
25 goes beyond that. Then he goes to the Polunksy unit,

1 where you know there, yes, it's more secure. They're
2 in these little 8 by 10 cells. They're not in shared
3 cells. They're in 8 by 10 cells.

4 But you know from the correctional
5 officers, that you can get in trouble there, too.
6 You can get in lots of trouble there. You can
7 assault people. You can assault correctional
8 officers. You can throw stuff on them. You can
9 threaten them. You can yell at them. You can curse
10 them. See any of that from him? Zero. Zero. Bunch
11 of correctional officers said nothing for him.

12 In fact, one officer, Officer Blanton,
13 got up here and told you he was nice to him. Every
14 time he got him out -- in and out of the cell, he
15 thought he was pleasant to him. They're going to get
16 up here and argue to you, "Well, we're talking about
17 society means everywhere." Society for him means
18 prison only. Don't take your eye off the ball here.
19 It's prison only.

20 MR. LONG: Your Honor, I'm going to
21 object. The Court of Criminal Appeals has stated
22 this jury can consider free world society and regular
23 society.

24 THE COURT: It's sustained.

25 MR. SCARDINO: All right. He is in

1 prison and it's both. It's anywhere. It's society
2 is prison and out -- elsewhere. His -- the only
3 place he's going to be is in prison. He's going to
4 die there. It's all we're talking about here.

5 What's else did we here from -- from
6 Mr. Woods? The other thing we heard from S.O. Woods
7 was the answer to this statement, that Prosecutor
8 Long made when it started, that he'll be able to roam
9 the prison freely. Trying to scare you. Roam the
10 prison freely. S.O. Woods came in here and told you,
11 "No, he's not." Even if this jury gives him a life
12 sentence, he goes right back in to that little 8 by
13 10 thing. He doesn't go out in general population.
14 He even said, he gets in the general population to
15 the point that he'd be a G2, which we were even
16 talking about that. There were five levels of prison
17 in the general population.

18 He's stood up here and told you he'd be
19 G2, next to least, moving around the prison. But
20 Woods told you, "No, no, no. He's not going to be --
21 he's going to go right back to where he was." He's
22 going to go right back in that 8 by 10 room, with a
23 steel door in the front. The most secure place they
24 do have.

25 And why is he going to do that?

1 Because he's been classified as Aryan Brotherhood of
2 Texas. They knew that. They knew that when this
3 started. They knew it. They knew exactly where he
4 would go. And yet he got up here and told you that.
5 And didn't bring you anything to rebut it. Nothing,
6 zero. Knew that's where he was going, knew that's he
7 where he'd be. And that's where he's going to be.

8 We don't know how he got classified
9 that. We do know that he is. We do know that he
10 wasn't in all the other trips that he came to prison,
11 he wasn't classified as ABT, as we call it, Aryan
12 Brotherhood of Texas. But we know that sometime in
13 the 2000s, right in there, around -- it looks like
14 around 2005 it's in there. That he was -- he was
15 housed with Billy Mason in a cell, and Billy Mason is
16 ABT.

17 MR. LONG: I'm going to object, Your
18 Honor. Nobody ever testified that they were in a
19 cell together.

20 THE COURT: That's sustained.

21 MR. SCARDINO: There's a -- the only
22 thing that got him classified was a picture of Billy
23 Mason and the fact that his name is in The Book Of
24 Life. That's it. Do you see any tattoos on him that
25 reflect Aryan Brotherhood? Because they've got a

1 right to have him take -- to stand up here and have
2 him take his clothes off if they want, and show you
3 tattoos. If he had any, don't you know they would
4 have done it?

5 Do we have any letters that we wrote
6 about being an Aryan Brother and supporting that
7 Aryan Brother way of life or whatever that is? No.
8 We don't have any of that. But you know that's where
9 he'll go when he goes back.

10 Now, what else do we know about this
11 future dangerous question? We brought you the
12 testimony of Dr. Vigen. And Dr. Vigen came up here
13 and he told you that he had been part of many
14 studies. I think he said it was six of them, but he
15 talked about two of them. And one of them we talked
16 about was a study they did over a 20-year period of
17 111 death row inmates; 111 people that had been sent
18 to death row. The juries had sent them to death row
19 for committing capital murder. And that all 111 had
20 gotten off of death row and had been now doing life
21 in the penitentiary.

22 And that was the study that he did, to
23 study what were their acts of violence while they
24 were on death row and after they had gotten off of
25 death row. And he told you that some of these

1 people, that about 48 of them I think he said, or
2 almost half of them, were 17-year-olds, that the law
3 put them in there. But the others had gotten there
4 some other way.

5 I think he told you that six of them
6 were persons that had been convicted of killing a
7 police officer. I remember Mr. Long made a big deal
8 about, "Well, this study's no good. It's -- you only
9 had -- out of 111, there are only six of them up
10 there that had been convicted and sentenced to death
11 for killing a police officer. Sorry. That's a lot
12 of time and effort to compile these statistics,
13 compile this evidence and that's their response to
14 it.

15 Which is also interesting. Was there
16 any response to it? Did they call another expert?
17 Did they show you another study? Did they show you
18 anything like that? Is there anything to respond to
19 that? Except get up here and get out the diagnostic
20 manual and try to show that well, maybe Carl is
21 antisocial. Well, yeah, all of Carl's history, all
22 of his 37 years in the penitentiary. Because we
23 showed you that -- his disciplinary records for that,
24 too.

25 Unfortunately, prison works for him.

1 He does well in prison. When to get up, when to eat,
2 when to do this, when to do everything. That works
3 for him. The first whatever 13 trips -- 13
4 convictions, he had three write-ups, that was it.
5 They were minor. One of them he had a weapon. Woods
6 got up here and told you, "Well, a lot of guys have
7 weapon for protection." There's nothing -- no
8 evidence that he used it.

9 So anyway. I got off track here a
10 little bit. So we talked about what Dr. Vigen said.
11 And the other thing Dr. Vigen told you is that he's
12 aged out. That's really the key to this. He's aged
13 out. He's 68 years old. Look at this question.
14 He's 68 years old, has never committed a criminal act
15 of violence since he was convicted back in 1991. Not
16 one, zero. And to ask you, do you believe beyond a
17 reasonable doubt he'd commit criminal acts of
18 violence that would constitute a continuing threat.

19 It goes way past just a criminal act of
20 violence. It says "continuing threat." We've got 22
21 years of no acts of violence. It's definitely not
22 continuing. When's he going to start? Is he going
23 to start in year '30? When's he going to start?

24 That's what's wrong with the death
25 penalty for this man. That why we have these

1 questions. That's why, when we talked to y'all about
2 your jury service, that every one of you said, I
3 understand there can be cases, even in the killing of
4 a police officer, where a life sentence is warranted.
5 Every one of you. Well, if there's -- if this isn't
6 one, then there's not one.

7 You get the unique benefit of seeing 22
8 years into the future. That's the secret to this
9 case. That's the difference. That's the big
10 difference. He's aged out. He's not to going to be
11 a threat. He's not a threat.

12 Vigen's study showed that even those
13 guys had a very, very low violence rate. Very low.
14 He said 3.5 percent of the ones that are on death
15 row, 4.5 of the ones that had gotten off of it. It's
16 very low, very low. Him, zero.

17 What else did you hear? You saw a
18 video clip, and I have a sneaking suspicion that
19 you're going to get to see it again, all right? Now,
20 the video clip. The video clip is an interview with
21 Carl Buntion a couple of years ago. And we told you
22 this going in. He maintains that he was justified in
23 doing this. He wasn't. He isn't. We agreed to that
24 from day one. We said that the day we got up here
25 and talked to you at the start. He's not justified

1 in doing this. That's not what this trial is about.
2 They're trying to make it that's what this trial is
3 about. Somehow that's what this is. He's guilty.
4 We're talking about what to do with him. Whether to
5 kill him or give him a life sentence in the
6 penitentiary, okay?

7 So, the video clip says that he thought
8 he was justified in it. It's nothing new. We knew
9 that going in. The video clip -- remember what this
10 is. It's a person from a television station,
11 Phil Archer. They're in the entertainment business.
12 That's what our media, shamefully, has come to in a
13 lot of circumstances. It's not so much reporting the
14 news anymore, it's the shock value. It's to scare
15 you. I mean, look at the way they cover --
16 everything they cover is like that.

17 So, he didn't go up there to have some
18 fuzzy, warm interview, to have something come from
19 that. He wanted something out of that that would
20 have some shock value. That's all he's looking for.

21 What else did you hear? Oh, the
22 letters. Heard a lot about the letters. Dr. Vigen
23 got up here and talked to you about the letters a
24 little bit, and he talked to you about -- which made
25 sense to me, that -- that we all play roles in our

1 life. We play different roles. I play a different
2 role with my mother than I do with my brothers. Or I
3 play a different role with friends than you do with
4 your wife. It's a -- we all play different roles and
5 say different things and have different manners of
6 speech with those different groups of people.

7 You heard Zeke Young and the other man
8 who ministered to him, talk about he wrote them
9 letters. None of this stuff in there. So, some of
10 it's role-playing. And I agree. Some of it's bad,
11 some of it's racist, some of it's sexist, some it's
12 antisemitic. So you give him the death penalty for
13 that? That's what they're going to get up here and
14 ask you to do. To give him the death penalty for
15 these letters. See that anywhere in any of these
16 questions? So they give him the death penalty for
17 writing these letters. Anyone see that anywhere on
18 any of these? No, it's not in there.

19 And Dr. Vigen sat here, after hearing
20 all that and hearing all the letters and doing all of
21 that stuff. Did it change his opinion about whether
22 Carl's a future danger or not? No, it didn't. And
23 if somebody knows about this stuff, he does.

24 All right. So you got to go back there
25 and answer these questions. This question: Do you

1 find beyond a reasonable doubt there's a probability
2 -- this is more likely than not, okay? Remember
3 that. Judge told you that. More likely than not,
4 that criminal acts of violence be a continuing threat
5 to society. The answer to this question when we
6 started was "no." The answer to this question during
7 the trial was "no." And the answer to this question
8 right now is "no." That's the answer to this
9 question. When you get to that, that's question
10 number two. All right.

11 Mr. Keirnan will get up and address you
12 when I'm done. And he's going to tell you his
13 impressions and views of some of the evidence,
14 because you're the ones that saw it, you're the ones
15 that heard it, you're the ones who get to decide
16 this. And like I said, don't -- don't cheapen this
17 experience for yourself, all right? Don't go back
18 there and do something that you don't want to do.
19 You're not a team, you're 12 individuals, okay? You
20 go back there and you vote your own vote.

21 We've talked to you about this. The
22 law says, "Do not violate your own moral principles."
23 Don't do it. You don't have to agree with the
24 other -- other folks on the jury. You can say
25 whatever you want to say about your verdict. You

1 don't -- well, like we talked about, you don't even
2 have to explain it to the other jurors. You don't
3 have to be back there a long time. You don't have to
4 be back there any time.

5 And if you get back there and decide
6 how you want to vote, say it. And if it disagrees
7 with the others, just say it. And if that's your
8 feeling and it's not going to change, then tell the
9 bailiff that you want to send a note out and say I --
10 that's my vote and that's how I'm going -- it's not
11 going to change and that's the end of it. You don't
12 have to stay back there. You don't have to dread
13 being housed tonight.

14 But don't violate your own morals, just
15 because it might take longer than you think. And
16 here's why. Because in the heat of this, you'll go
17 back there and you'll go, "Well, you know, I know I'm
18 not supposed to do this, seems unreasonable. Or
19 you're -- you'll go -- take your time, all right?
20 Because this verdict's going to last for a long, long
21 time. His life.

22 So when you go back there, think about
23 it like this. When you go back, the Judge is going
24 to lift the admonitions, saying you can talk to
25 somebody else. You can talk to your loved one and

1 your friends and anybody else you want to about your
2 jury service now. You can talk to them about it.

3 And so you'll go and talk to them and
4 they'll go, "Well, yeah, you can tell me about it
5 now. Yeah, it's pretty exciting stuff, you know, a
6 death penalty case." And you can talk -- you can
7 talk -- say you talked to them about this issue.
8 Say, "Yeah, I talked to them about this." And they
9 say, "Well, tell me what you heard?" "Well, I heard
10 this old guy, 68 years old, committed this crime 22
11 years ago. Hasn't been in any trouble in the prison.
12 Could have been, didn't. Wasn't. There were other
13 guys that have. You heard about other guys that
14 have. Heard about all the stuff but he had. Heard
15 from experts that he's aged out and is not going to
16 be a continuing threat."

17 If you answer this question "yes,"
18 they're going to say, "Well, why did you answer it
19 yes?" "Because the State wanted me to. Because I
20 was afraid. Because there were a lot of police
21 officers out here." That's not the answer. Feel
22 good about your verdict. Don't do that to yourself.

23 Don't be where you're standing
24 somewhere a year from now, and you're sitting around,
25 and going, "God, I wish I had voted the other way.

1 God, I wish I hadn't done that." You'll hate
2 yourself for it. And it can't be undone. It can't
3 be undone. Don't do that. And especially if you
4 vote to kill this poor old man. Think about that.
5 Because one day you're going to read about it in the
6 paper. You know, tomorrow they're going to kill the
7 oldest guy ever killed in Texas. And you're going to
8 sit there and say, "I was on that jury." Don't do
9 it. You want feel good about it.

10 Now, I'm going to sit down here in a
11 minute and not waste any more of your time. And when
12 I get through talking and when Mr. Keirnan gets
13 through talking, we won't get to talk anymore. And
14 you know us, we like to argue. It's what we do. And
15 I'm not get to respond to what they say.

16 So, what I would like for you to do, if
17 you will, is while you're sitting there listening to
18 their argument, think about what would Scardino and
19 Keirnan say in response to this? Because I'm not
20 going to able to get up and respond to it. So think
21 about that. Think about what -- what it really is.
22 And not if it's trying to be made to believe, okay?
23 Thank you.

24 THE COURT: Thank you, Mr. Scardino.

25 MR. SCARDINO: Thank you, Your Honor.

1 THE COURT: Mr. Keirnan, you may
2 proceed.

3 MR. KEIRNAN: Thank you, Your Honor.
4 May it please the Court?

5 THE COURT: Uh-huh.

6 **DEFENSE'S CLOSING ARGUMENT**

7 MR. KEIRNAN: Good morning.

8 JURY PANEL: Morning.

9 MR. KEIRNAN: Lawyers tend to become
10 philosophical. And boy do they in cases like this.

11 Only a few of us ever get to stand
12 before a jury and argue life or death. It's
13 difficult. It's a monumental thing for me to do it.
14 I accept it as my job as a lawyer and as a
15 professional to do it. Today I'm going to do it.

16 But it's about -- it's not about me,
17 it's about you and the decision that you got to make.
18 And don't let anybody tell you that it's less of a
19 decision than you know in your heart it is. Don't
20 let anybody tell you that. Don't let anybody tell
21 you it's his decision or their decision or Pat Lykos'
22 decision.

23 The United States Supreme Court told
24 you -- told us to tell you, and we told you all,
25 whether it was Mr. Scardino and I -- or I, during the

1 voir dire examination, that it's not just about
2 answering these three questions and then the fourth
3 question. That it truly is a reasoned moral
4 response. That jurors must know what they're doing
5 and where the responsibility lies.

6 Because Pat Lykos doesn't make the
7 decision of life or death. They make the decision to
8 ask for it or to argue for it. And they don't always
9 get what they want. And many people who have killed
10 police officers receive a life sentence, okay? But
11 the decision that you make is today and it will
12 always be in your life an individual decision, a
13 reasoned decision, a personal decision, and Lord
14 knows, it's a moral decision that you make. And I
15 submit to you it will -- there will never be a more
16 important decision that you ever make in your life,
17 and one that will stay with you the rest of your
18 life.

19 We all make decisions in our life.
20 And, you know, I do agree with Ms. Dozier, we make
21 choices. And the choices and decisions that we make
22 define who we are as people, don't they? It
23 certainly has defined you, Mr. Buntion, the choices
24 and decisions that you made.

25 I don't know you all. I've read

1 something about you in your -- in your questionnaire.
2 I know a little bit about you from reading about you
3 and seeing you and seeing that you're here. I don't
4 know why you are you or why I am I. It's a thought
5 that we all have. How do these people -- how do we
6 all become the person that we became? Why am I
7 married and have two children? Why are you married?
8 Why do you have children? Why do you -- why do you
9 say the things to them that you say to them? Why do
10 you raise them the way that you raise them?

11 How did you come to be right here in
12 this moment in time in life. And to be the kind of
13 good people that you are? Why aren't you Carl
14 Buntion? Is it the grace of -- but for the grace of
15 God? Is it just -- is it just a choice that you make
16 that you're always responsible, or are there other
17 influences that make a difference in your life that
18 brought you here to be who you are? And you know
19 that's true.

20 If you're anything like me, you
21 probably have a loving family. You probably had
22 encouragement from your parents. You probably had
23 encouragement from your teachers. You probably had a
24 nurturing way of life when you grew up. You probably
25 had a pretty good home environment. Everybody has

1 problems in their household. But you probably had a
2 pretty good home environment, didn't you?

3 You're probably all educated. You're
4 probably all went past the 6th grade. You all were
5 probably taught right at home to love other people.
6 Why do we make the decisions we make in life? Do
7 those things have anything to do with it? Do they?
8 I'm not saying it justifies a wrong or killing of a
9 police officer. But I want you look at who you are
10 in making this personal, moral decision that you
11 made. And about Mr. Buntion. About the taking of
12 another human being's life.

13 Were we taught to respect others? Were
14 we taught to treat others with kindness? Were we
15 schooled and educated in the Bible and the teachings
16 of God? And the great philosophers of art --
17 beautiful art and music. Have you heard them? Do
18 you recognize them in your life? I bet you do. All
19 that went into making you who you are and me who I
20 am. And helping me make the decisions in my life to
21 be Casey Keirnan.

22 Were we taught to be forgiving people?
23 Along the way to this moment, were you taught that?
24 Were you taught to be understanding? Were you taught
25 to be kind? Were you taught the quality of what

1 mercy is? Was there some example in your life, that
2 set out those principles for you, that made you get
3 here. I know this. Some of you have children, some
4 don't. I do. Prosecutors do. Judge does. I
5 believe that it's God that's given us those children
6 and he given them to us -- God gives them to us with
7 blank slates. They are just blank. And we're
8 entrusted with a certain gift of life. And we set an
9 example for them and we love and we educate them and
10 we inspire them to become the people that you are.

11 When I stop and think of this trial and
12 who testified in this trial, there is an image that
13 will last forever in my life and I think yours, and
14 it's the day -- it's the moment that Cody Irby got on
15 this witness stand. A beautiful young man and in
16 uniform. So smart and so handsome in that uniform.
17 He did. And so brave to do it. You will never
18 forget it.

19 You know, his father was murdered. We
20 know that. But you know what? His father loved him,
21 too. You saw the picture of -- that his father had
22 of him when he was little. And the one thing you
23 know and Cody knows, is that his father did love him
24 and his father did say set an example for him. And
25 though his father is not here, nor his father before

1 him, his grandfather, there's an immeasurable love
2 that he has. And he'll always have, that he got from
3 an example that was set from a good man.

4 We all know that there is no greater
5 love than someone who lays down their life for
6 another. We all know that. And there's another
7 example of that as well, too. We -- what we say and
8 what I say and Mr. Scardino says, takes nothing away
9 from the valor of police officers and the respect
10 that they deserve in our society.

11 He passed on immeasurable love to Cody
12 and his sister and his wife. And an immeasurable
13 loss. But I -- as sure as I tell you that, I tell
14 you this. And I think you know it. That the sins of
15 the father are passed along to the son as well.
16 Because we do -- we want to know about your
17 decisions. We want to know about your choices. This
18 jury has an obligation to look at you, Mr. Buntion,
19 and look at your choices and why you became you and
20 you didn't become them, okay?

21 Before we get into that and that deals
22 with a special issue, let's talk about another
23 decision. This whole thing is about decisions.
24 Don't think that we had to be here. This is an odd
25 case. It's 22 years ago that this happened. It's

1 rare and odd. You've seen that in the testimony, you
2 know that. This is something that happened a long
3 time ago. And the decision we give the elected DA in
4 this case, is do we seek the death penalty or not?

5 Because a jury has convicted him and
6 they said you intentionally killed this officer,
7 okay? And for that you get a life sentence. You all
8 know that. You go off to the prison and serve a life
9 sentence. For him it's an 8 by 10 cell, 23 hours a
10 day with one hour out. That's a big punishment. And
11 he's been serving 22 years of that.

12 Now, the decision was made and we hope
13 that that decision was made for the right reasons.
14 We hope that the prosecutors and based on advice of
15 the prosecutors, they've -- they've looked at this
16 case, they've looked at all the evidence, they've
17 read the previous trial, they've looked at
18 everything. They thought and took into -- and she
19 thought and took into consideration everything about
20 this case in deciding do now, we want to have this
21 man executed? Do we want to go through this? Can we
22 prove these issues, now that 22 years has passed? We
23 hope that that -- she made the decisions for the
24 right reasons, and not because it was just the
25 killing of a police officer, which is what she used

1 to be.

2 Because you all are chosen from 200
3 people that said, I won't give the death penalty
4 simply because it's the killing of a police officer.
5 We hope this isn't a political trial; we hope it
6 isn't. We hope all that. We hope it's for the right
7 reasons. We're going to look at the evidence and see
8 what it is. Because these two prosecutors didn't
9 make this decision. Pat Lykos did. They're here to
10 prosecute it.

11 They had to look at the evidence
12 carefully. They had to deliberate on it. They had
13 to give it careful consideration of what kind of
14 theory are they going to present in regard to whether
15 or not it was more than intentional. I submit to you
16 that -- let's look at what intentional is, because
17 that is what gets a person guilty and gets them a
18 life sentence, okay?

19 When you go back and answer these
20 questions and you're going to answer the first
21 question, what you need to do is look real closely.
22 And I submit that you should. You should read what
23 is the -- what is the definition of "intentional"?
24 You all told us and we went to great lengths to say,
25 just because somebody intentionally killed a police

1 officer, I'm not going to answer that issue "yes."
2 We went through 200 people to find the ones that
3 could say that. That I recognize that the law says,
4 in order to get your way onto the death penalty, it's
5 got to be more than an intentional killing.

6 An intentional killing -- and the Judge
7 tells you, a person acts intentionally or with the
8 intent or respect to the result of his conduct, when
9 it is his conscious objective or desire to cause the
10 result. Break that down for second. What was the
11 result? Officer Irby died.

12 What was Mr. Buntion's conscious
13 objective or desire out there on the scene, to be
14 intentional? To cause the result. To kill him. So
15 they can't just prove to you that he wanted to kill
16 Officer Irby and did, and that's the deliberate. No,
17 it's not. That's intentional. And every one of you
18 now has to go back in the jury room and look at this
19 first issue and say, "Yes, when he pulled a weapon
20 and he shot him in the head and shot him two more
21 times, he wanted to kill him. Hah, that's
22 deliberate." No, it's not, that's intentional.

23 They can't just reprove that he's
24 guilty, because it's the killing of a police officer.
25 There has to be more. What is it? What is it that

1 they did when they came up here to tell you, here's
2 our theory on why it more than you wanted to kill the
3 police officer and you did. I'll going to read it to
4 you. I'm going to read to you the words of Mr. Long.

5 "But you're going to hear from many
6 witnesses that I just named to you, that despite
7 those orders to stay in the car, the defendant gets
8 out of the passenger car, slinks down the car,
9 reaches a large caliber pistol up and over and fired
10 one time. Officer Irby was hit right here and you're
11 going to see pictures of those wounds. But the
12 defendant didn't stop there. In a very deliberate,
13 calculated move, you're going to hear how he then
14 gets out, continues walking, walked over Officer Irby
15 and shoots him two more times in the back as he's
16 down on the ground."

17 Do you remember Mr. Long standing here
18 and going like this (indicating) over officer Irby's
19 body?

20 These are each 20 year veterans of the
21 District Attorney's Office. You know they've worked
22 on this case. You know they've thought, how are we
23 going to prove this issue to a jury, that it's more
24 than he just wanted to kill him. Here's what they
25 decided to say they would do. They would tell you it

1 was that, that he stood over him and shot him twice.

2 And I tell you what, I agree with them.

3 If Mr. Buntion walked up, stood over Officer Irby and

4 pulled the trigger twice, the way he demonstrated it

5 in opening statement, that's deliberate. That's

6 more, isn't it? That's more. And he stood right

7 here and he did it. These prosecutors are trained

8 and very, very smart and very experienced.

9 And Ms. Dozier did it too. She had a

10 man lie down in this courtroom right here. Lay down

11 and show the jury. Let's demonstrate it for you. Do

12 you remember? Although he lied on his back and we

13 know the medical examiner disproved that. That

14 didn't happen, because the shots came into the back.

15 Had a man come up right in front of you and stand

16 over him and shoot him. That's deliberate. That's

17 what she did then.

18 Today she just argued he went to the

19 front of the car. That's what she argued today, he

20 went to the front of the car. They shifted in final

21 argument after the evidence is in. Why would you do

22 a demonstration before a jury like that? Because

23 it's effective. Because it plants a visual in your

24 mind when you go back in. When you see somebody lay

25 down, and you see a prosecutor stand over you and

1 shoot you like that. It makes it more than
2 intentional. And that's what they have to do.

3 Then they said, "Well, if that's not
4 enough, or the jury doesn't buy that," and we're
5 going to talk about whether you should buy that or
6 not, based on the evidence, is that there was another
7 witness, Darlene Brown. Remember her? That was
8 Killingsworth's girlfriend. Well, then you should
9 believe that he planned that if he ever got shot by a
10 police officer, he'd take that .357 and kill him, so
11 he wouldn't have to go to jail.

12 Wow, could you execute a man based on
13 the testimony of Darlene Brown? Could you really?
14 Could you really? Could you take that and live with
15 that -- that as the gospel truth? Something you rely
16 upon as the difference between intentional and
17 deliberate. Those are the two things they have.
18 Those are the two theories they chose. And that's
19 how they went about to prove it to you.

20 While we're on the subject, let's --
21 let's dispense with one aspect of it. And that's
22 Ms. Brown, okay? Because she loved
23 Mr. Killingsworth, didn't she? He loved him. She
24 wrote a letter that she loves him.

25 Is this on?

1 Let me just show this to you and
2 refresh your recollection a little bit about this.
3 Now, we can look at it right there. Remember that
4 picture? There it is on both of them. Remember
5 that? That's right out of the suitcase. Those are
6 the needles, those are the heroin. Ms. Brown came up
7 and told you -- this is their witness. The only time
8 she's ever testified. No other testimony to read,
9 nothing.

10 She came and said, "I came up there
11 because I needed to bring him clothes," What are you
12 bringing prisoners clothes? Never in my life ever
13 heard of that. Bringing somebody clothes. That's a
14 lie. She went up there to try to get Johnny -- to
15 see what was going on with Johnny Killingsworth. She
16 got up there and the police officers laid that out,
17 showed her her clothes in her car, her heroin, her
18 clothes. And she was scared to death. There's no
19 doubt about it. She was scared to death. The only
20 thing that her statement has in there is, he had a
21 .357 when I saw him. I've only been here for two
22 weeks. I live in a camper behind somebody's house.

23 Live in a camper behind somebody's
24 house. And I've only been here for two weeks and I
25 saw him twice. The first time he showed me a .357.

1 I can't remember where it was, where we were. And
2 the next time he said, if he ever got into a traffic
3 stop, he'd kill a police officer. Well, lo and
4 behold, they're talking to police officers who are
5 about to put her in jail for possession of heroin and
6 all that stuff. And you can make a statement of that
7 and you can go. She said she left and was gone
8 forever.

9 And then she said, "No, no, no. I
10 did -- I came back. I got the car and that -- none
11 of that made any sense. None of it made -- even they
12 told her, she left forever and then she started
13 changing everything.

14 That's how they -- that's -- that's the
15 substance of upon which you can be part of executing
16 a human being? The testimony of Darla Brown --
17 Darlene Brown? No, need more than that to prove what
18 they now say is premeditated. Do you think it was
19 premeditated because of Darlene Brown? Do you really
20 believe that? That Carl Buntion's ready to go kill a
21 police officer. That was a fluke traffic stop that
22 happened that day. Just by coincidence and sheer
23 chance that they got together. He didn't have it in
24 his mind that I'm going to -- I'm going to kill
25 Officer Irby or I'm going to kill another police

1 officer, or anything like that. That's not
2 premeditated. That's not what premeditated is and
3 you all know that.

4 That's grasping at a straw, because
5 it's either that or that he stood over him and shot
6 him. Because here's what happened. I think you all
7 know what happened. That it was a traffic stop that
8 happens, he's standing in the back -- Officer Irby is
9 standing in the back talking to Killingsworth. Carl
10 Buntion is sitting in the car with a gun. Carl
11 Buntion knows he's got a gun. He knows he's on
12 parole. You can assume all those things, right?

13 And you -- and at some point, he gets
14 out of the car and they tell him to get back in the
15 car. And he's motioning to him. Carl Buntion's
16 trying to leave. Even they tell you, he tries to get
17 out of the car several times. But he's still back
18 there talking. And as he gets out of the car,
19 Officer Irby pulls his weapon. He pulls his weapon,
20 okay? And we're going to talk about that in a
21 second. But he pulls his weapon. We know that
22 because it's out of the holster. That you -- and
23 it's in evidence. That you have to unclick, pull it
24 out and get out and it's on the ground, okay?

25 The other thing we know beyond any

1 doubt, is that he's pulled that weapon, unclicked it,
2 pulled it out and got it out before he was shot in
3 the head. Because the medical examiner told you when
4 he was shot in the head, he couldn't do anything. He
5 was rendered incapable of any movement whatsoever,
6 except to fall to the ground.

7 So now, we know that is a fact. But
8 back to the story. What do you mean -- what do you
9 really think happened? Why did he pull his gun? He
10 pulled his gun because he saw this guy -- that guy
11 with a gun. He didn't just pull it for no reason.
12 He could see through there and he's waiving at him.
13 He can see the guy's got a gun and out comes his.
14 That is perfectly reasonable. That's acceptable.
15 That's what they're trained to do. He was supposed
16 to do that. There's nothing wrong with him pulling
17 the gun.

18 When Officer Smelley came to the scene
19 and was helping with first aid, and was trying to
20 give mouth-to-mouth. She asked Castillo about that.
21 About the gun. "Yeah, he pulled his -- he pulled his
22 weapon but he was unable to get a shot off."

23 Well, getting that out of him on the
24 witness stand was like getting up there like a
25 dentist with a pair of pliers, trying to pull teeth.

1 Everybody was afraid to say he pulled his gun.
2 Nobody ever wanted to say he pulled his -- he pulled
3 his gun and he told her that right then. That's
4 okay.

5 These witnesses came here to tell a
6 story -- of a whole story about a police officer
7 getting shot and thinking that if they said anything
8 about the police officer pulling the gun or whatever,
9 that somehow helps him or something. It doesn't help
10 him. It doesn't make the case any different. It
11 explains it to you. Because the facts are what they
12 are.

13 The officer saw that he had a gun.
14 Carl Buntion sees that he's pulling the weapon. And
15 even Officer Breaux, he's now Elmore Breaux, told
16 you, he got down -- he kind of got down in a crouched
17 state. And he did see -- he was the one that
18 mentioned that he did see a gun. He did see what he
19 was doing. And Carl Buntion then shot him. And then
20 he came around toward the front of the car and he
21 shot him two more times.

22 Now, here's what the State has done.
23 And when he shot him, by the way, it matches the
24 conduct of intentionally killing somebody, doesn't
25 it? Fire a weapon, you point it at them, you intend

1 to kill them, right? That doesn't -- still doesn't
2 make it deliberate. But here's what happened in this
3 trial. Because that's all it is. The prosecutors
4 took the movie and slowed it down into slow motion.
5 All of a sudden, the defendant got out of the car,
6 walks -- slinks slowly to the back of the car. Wait
7 a minute, look at that car. Look at the car. It's
8 a two-door.

9 As soon as you get out of it, he's
10 right where he is to fire the shot. There's no
11 slowly walking back to the back of the car. Look at
12 the photographs. You know what that is? That's
13 dramatization to get this to deliberate. They slowed
14 the movie down. He got out of the car, he walked
15 real slow to the back of the car. And when he got to
16 a certain point. No he didn't.

17 He was getting out of the car. You can
18 see it in your mind. He's getting out of the car.
19 The officer sees it, he sees him. This thing happens
20 real fast. He reaches over and he shoots him and you
21 killed him and you murdered him when you did that.
22 And he went around to the front and he shot two more
23 times. You think that that was, I'm going to walk
24 around to the front of the car, real nice and calm.
25 Well, he's making it that way to make it deliberate.

1 Do you really think that that happened?
2 And that he shoots -- that he stands over him and he
3 shoots him. That's what they need to make that
4 issue. That's why they give you the visuals. That's
5 why they slowed it down into slow motion. That's why
6 they're saying those thing. And now, Ms. Dozier
7 comes and says, he came to the front of the car and
8 fired. Because it has been completely disproven by
9 the expert testimony.

10 And that's the expert testimony of
11 Baldwin and Lentschke, who pulled the lifts. They
12 showed you where the shots were fired. Mr. Scardino
13 demonstrated it. If this is where Mr. Buntion got
14 out of the car, the car door opens and as soon as he
15 gets out of the car, there's no slinking down to the
16 back of the car. That's -- that's a visual, a
17 prosecutorial visual for you. He got out of the car
18 and you immediately see this guy's going for a gun.

19 And in Carl -- Carl Buntion's brain, he
20 thinks he's got a right to shoot him. He's got no
21 right to shoot a police officer. A police officer
22 has every right in the world to pull a weapon on you.
23 What are you doing? He sees -- two guys look at him.
24 They weren't on their way to the community college,
25 were they? He had every right in the world to do

1 that.

2 But it happened fast. He sees that, he
3 sees that, he fires and he comes around to the front
4 -- he doesn't know whether he's hit or not. And he
5 shoots two more times. And then all of a sudden,
6 what happened? They slowed it down real slow, real
7 dramatic. Shoot him twice, zoom, zoom. And then
8 what happens then with all the stuff? What did he
9 walk slowly over to the car, fired into that car?
10 No, he didn't. He was running. It was fast; it was
11 panicked.

12 And everything after that was panicked.
13 And what -- there's going to be two separate things
14 in the way all this happened? No, it's not. That's
15 drama from the State to make it deliberate and more
16 than intentional. And it's not. You use your common
17 sense and look at that. This is not a premeditated
18 killing. Because here's what happened and here's why
19 and how they've changed their tune on that. Because
20 there was someone -- because there was one of the
21 witnesses that did testify and Breaux did, too. You
22 know, he didn't in his original testimony.

23 But I think it was Ms. Clerkley who
24 said, "Yeah, you know, he was writing a ticket. And
25 for no reason, you know, he didn't even see it

1 coming. He shot him, then he come over and stood
2 over him and shot him again." There wasn't testimony
3 to that. But we know that isn't what happened
4 because of Baldwin told you about the lifts and what
5 they mean -- what that means. We know where the
6 shots were fired from. They were fired from there --
7 how it comes out of the gun and it sprays to the
8 other side. It sprayed over the driver's side. It
9 sprayed over the driver to the front of the hood,
10 front of the hood.

11 None of that could have happened. You
12 couldn't have those powder without it being shot from
13 there. And now they concede to it. Because it's
14 been proven by us during the trial, okay?

15 And then he also said, "Well, still
16 they didn't quite want to give up on that." You
17 know, about being there, shooting over Officer Irby.
18 They didn't want the quite give up on it, because
19 they said, "Well, it's 3 feet. At 3 feet it
20 dissipates. Standing up at 3 feet it dissipates. I
21 shoot the court reporter right here, and I fired from
22 here, there's not going to be any residue on her. I
23 got to get within 3 feet to do it. So it could be 3
24 feet 2 inches? What did she say? Yeah, but not if
25 you're pointing down. Not if you're pointing down

1 like that. There would be residue on the officer's
2 -- stippling or residue on his shirt and clothing.

3 Then was it raining out there or
4 something else? No, it wasn't raining. Nothing got
5 wiped away. Because it didn't happen that way, and
6 now -- now, they're going to say he ran around to the
7 -- he -- I'm sorry, they're saying he walked slowly
8 to the front of the car and fired two more shots,
9 okay? Wasn't the way Mr. Long described it. He gave
10 careful consideration to paint that visual, to make
11 it deliberate, to make it happen that way and it
12 wasn't deliberate.

13 At the very best -- and you can see, I
14 showed and offered certain photographs in, that --
15 that people had -- have testified to that, "Yeah, he
16 was really close. He was right next to -- he was
17 right next to -- 3, four feet away from the driver's
18 side -- driver's side door, Officer was lying 3 or
19 4 feet, right there. That isn't where he was. That
20 isn't where he was. See where he was? Do you see --
21 do you see anything by the driver's side door? No,
22 you don't. So what you see is that it's back here by
23 the back of the bumper and further out, okay?

24 And Mr. Buntion didn't just jump into
25 action after he shot the police officer. He was

1 panicked. He went into a total freak out panic
2 because of that. And those are the crimes that are
3 intentional. He got nowhere. He got nowhere.

4 I submit to you that beyond all doubt,
5 the answer to this issue, the first issue is "no."
6 And at the very least, the very least, you have a
7 reasonable doubt about it, about whether it's more
8 than intentional; at the very least, okay?

9 Because in order to answer the
10 question, take the Judge's charge, read what
11 intentional is. Be the juror that we know that you
12 are. Don't just say because he wanted to kill a
13 police officer, therefore that has to be deliberate.
14 We went through two months to get the right people
15 that say, "I recognize that we don't execute people
16 unless it's more than intentional. More than wanting
17 to cause -- wanting to kill him."

18 And it was a panic in a freak out. And
19 for those reasons, it's not the way they described
20 it. Nice advocacy, nice try. But it's not that,
21 okay? It's not that and you're reasoned people to be
22 able to do that. And when you answer that question,
23 the answer to the question is "no."

24 The other issue that I want to talk to
25 you about is sufficient mitigating circumstances.

1 And I think Mr. Scardino put it all here. There it
2 is. Do you find that, taking into consideration all
3 the evidence, including the circumstances of the
4 offense, that Carl Wayne Buntion's character and
5 background and the personal moral culpability of the
6 defendant, is there a sufficient mitigating
7 circumstance or circumstances that warrant a life
8 sentence rather than the death penalty?

9 Well, once again, I remind you of what
10 the United States Supreme Court says about that. Is
11 that even though the first three issues could be
12 answered "yes" in certain cases, that now -- that
13 now, all jurors must do this. They're now given the
14 authority, the power, beyond what Pat Lykos has,
15 beyond what these prosecutors have, to make the
16 decision, is there anything about this case that's
17 sufficient for me to think that a life sentence is
18 more appropriate than the death penalty, okay?

19 That's the question that you ask
20 yourself. That's the power that you have. It's not
21 about somebody proving that. It's just stop, he
22 doesn't have the -- can't get there, okay? I gave
23 you a reason not to get there about the
24 deliberateness issue. But I'm here to argue that if
25 you do get there, you're going to ask yourself, well,

1 what is it? I've looked back at everything about
2 this case.

3 Well, the very first thing about the
4 case is planning. It's a 22-year-old case. And we
5 as a society have already put a man in prison for 22
6 years. And we have made him sit in a cell and be
7 punished for 22 years. What does that mean? What
8 does that play into it? What do we do? Do we put
9 somebody in prison for 30 years probably and then
10 give him the death penalty? Do we do that?

11 This is an anomaly. This is a
12 different case. And if he was Brian Davis and he did
13 throw urine and feces on guards and he did have
14 marijuana in his cell and he did have a cell phone
15 and he did have pornography up there and he did
16 threaten guards, and did all those things, you might
17 think twice about it.

18 But none of that happened. So is that
19 a sufficient mitigating circumstance for you? It can
20 be if you want it to be. There's never going to be
21 anything that's sufficient for these prosecutors. It
22 doesn't matter whether they think it's sufficient.
23 It's whether you do. It's whether you do. Is it
24 sufficient to send him off for what remaining years
25 he has for a life sentence? Yes.

1 Is there anything else about it that
2 you think might be sufficient? Bobby Joe Buntion,
3 okay? You heard Ms. Dozier talk about Bobby Joe
4 Buntion. And you now that his sister, Rita, brought
5 him up here in his wheelchair. You know from his
6 testimony that he talked to her. You know that she
7 encouraged him to testify about these things about
8 their father. What a horrible monster he was. What
9 a horrible monster.

10 And now, I'm back to talking to you as
11 to why Carl Buntion is how he is. Why Kenneth
12 Buntion was shot down by the police and became a
13 criminal. And why Bobby Joe Buntion is the man that
14 he is and the criminal that he is. Those three
15 brothers out of that family, why aren't they here
16 being you? Huh? Rita was. Rita was good.

17 Why did all that happen to him?
18 Nothing Bobby Joe Buntion said on this witness stand
19 about seeing his father murder somebody or having sex
20 with animals or beating these children, or beating
21 their mother in a ditch until she had no teeth. None
22 of that makes it okay for him to kill a police
23 officer. That's never been what we told you. That's
24 not -- that's not what Dr. Vigen tells you. That's
25 not what I'm doing here today.

1 He gives you some insight into why he
2 makes the decisions he made. He gives you some
3 insight into humanity of all of us and what you do
4 with your children. What do you do with a child, a
5 gift from God? How do you raise it? You know. We
6 as -- as a smart society -- or -- we have to look at
7 those things. We have to care about those things.
8 And you do care about those things.

9 I think it helps you answer that
10 question, if you get to it about -- about that
11 childhood. You know. Ms. Dozier said it's about
12 choices that you make. We've made some bad choices.
13 We're only looking at why you made those choices,
14 Mr. Buntion, okay? They cross-examine him, "When do
15 you become responsible for those things? You are
16 responsible for those things. He is responsible for
17 those things. And he needs to die in prison, the way
18 God takes him and being responsible for those things.

19 Where's the win in this case? Do you
20 think there's a win or a loss for anybody in this
21 case? Do you think you can give him a life sentence
22 in this case, and think there's something mitigating,
23 that somehow the State loses? They don't. Do you
24 think somehow we win? We don't. What are we begging
25 you for. A few more year in an administrative

1 segregation cell, where he dies in that place, in
2 that hole. And, you know, is that what we're begging
3 for? It's a lot to beg for, isn't it?

4 Well, you -- you decide. Because the
5 Supreme Court says, it can be anything that's
6 sufficient to you. It can be that he's 68 years old
7 or would be in his 70s if he were executed. It could
8 be the 22 years that he's spent in prison that
9 Mr. Scardino talked about in this case, and his
10 behavior there. It could be the whole 37 years nine
11 months that he's spent in prison. You could say,
12 "I'm just not going to kill him, for all that
13 suffering -- for all of that, I'm just not going to
14 kill him. I'm going to let him die there."

15 It could be just the cruelty of it. It
16 could what Bobby Joe Buntion told you about the
17 childhood. It doesn't forgive him, but it gives him
18 a life sentence for you, if that's what you think.
19 It could be just because you say to yourself, but for
20 the grace of God, I wasn't born into that family.
21 Could be that.

22 It could be anything about facts of the
23 case, anything about the deliberateness, the non --
24 it could be Darlene Brown. It could be anything that
25 you think is appropriate. And nobody can argue with

1 your verdict. Nobody can make you explain why you
2 think a life sentence is more appropriate.

3 That's what that question does. That's
4 what it allows you do. It could be because you have
5 something in your heart and your soul that says,
6 "Today, because of all that has happened, I've
7 decided I want to be merciful to that man." Despite
8 what a prosecutor might come up here and tell you,
9 mercy is not -- he doesn't deserve mercy. Those who
10 say that, don't have a clue what about it is. Don't
11 have a clue about what a God-like quality that is.

12 None of us ever deserves mercy. We're
13 all going to pray for it one day. We'll all pray for
14 it. And Shakespeare says, "It's that prayer." And
15 we all pray one day for mercy. It teaches us to
16 render those deeds of mercy. Yes, it is. The death
17 penalty is brutal. It's archaic. It's abhorrent.
18 But we have it. It's the law in the State of Texas.

19 You can get in your car and drive in
20 this great -- through these great states and you will
21 wind up in places in this country where we don't have
22 the death penalty. Because it's changing. You can
23 go to Europe. They don't have it. You can't even be
24 a member of the European Union if you have the death
25 penalty. But we do here in Texas.

1 And when we do, there are prosecutors
2 willing to come before you and pound there fist and
3 say, "It's the law, it's the law." Well, it used to
4 be the law, you heard Vigen talk about it, that they
5 executed 17-year-olds, right? And there was a
6 prosecutor arguing, "It's the law." Used to be the
7 law that you executed mentally retarded people.
8 There were prosecutors going, "It's the law." And
9 that's a good reason to execute them, because they're
10 mentally retarded. We don't do that; we changed that
11 by the way. We've come further than that in our
12 society. We've made some progress.

13 We electrocuted them until their flesh
14 burned, we hung them, we gassed them in gas chambers.
15 We don't do any that. We executed them for less than
16 murder. We don't do that anymore. We did it in the
17 town square where they hung them. And if anybody
18 ever saw that and did see it, we rallied against it
19 and said we can't have it. We do it at midnight, at
20 6:00, whatever now. And that's what they want. And
21 if they have their way, that's what they'll get.

22 That some year from now, that
23 Mr. Buntion will be brought out of his cell. He'll
24 be taken down the hallway, out of that 8 by 10 cell
25 where he's always been for all these years, 22 plus

1 more. They'll bring him into a cold room, they'll
2 strap him down on a gurney and put that thing in his
3 arm, where they can attach the tube that's going to
4 feed that poison that's going to kill him, in the
5 presence of other people.

6 It's a grotesque thing, the taking of a
7 life. That's what they want. And, you know --
8 and Mr. Scardino's right, will it be in the
9 newspaper? Who will read it and who will care? For
10 just a little while, you will. I want to lift that
11 responsibility off you. No, they don't. Then you do
12 it. No, they don't.

13 But here's what they have to do. That
14 morning when you read that he's been executed, you
15 better say to yourself, "I know that he was a future
16 danger, despite those 22 years and Vigen and
17 everything else. I knew it and they convinced it to
18 me beyond a reasonable doubt. I knew it was more
19 than intentional, I knew that. I was convinced by
20 them about beyond a reasonable doubt." There's no
21 provocation in this case. The answer to that issue
22 is "yes."

23 But I -- then I looked at everything.
24 As you talked to somebody or you're just talking to
25 yourself or you're talking to God, whoever you're

1 talking to, when you see that he's deed. And you
2 say, "I looked at everything and there wasn't
3 anything in my heart. There wasn't anything that I
4 could find, that I know from my experiences, my life
5 experiences, who I am, any care, no mercy, nothing,
6 no forgiveness, nothing that I could give him to say,
7 a life sentence was more appropriate than the death
8 penalty." And then go on about your life.

9 Mr. Buntion or anybody that's been
10 tried for their life, has a right to your vote, don't
11 they? To your vote. Mr. Scardino's right, it's not
12 a group decision. The Judge says, you would go about
13 giving your answers, all 12 of you have to agree.
14 All 12 have to say, "We agree, to answer that first
15 issue 'yes,' to write a 'yes' in there," okay?

16 If somebody has made a personal, moral,
17 reasoned response to all of this and says, "No, they
18 get to do that." Nobody yells at them, argues with
19 them, criticizes them, does anything. Not the Judge,
20 not these prosecutors, not all these police officers.
21 Nobody can do that to you. Because it is your
22 decision. And you do live with it and you will live
23 with it, despite the argument of counsel.

24 And if you do have that and you can't
25 answer it, you can't put a "yes" in there. Or even

1 if you can't put a "no" in there, because there isn't
2 ten, then you don't. And there's nothing wrong with
3 that. Nothing. Our law allows for that. It's
4 perfectly okay. Perfectly okay. Because the Judge
5 tells you, all 12 have to agree on all three issues
6 and then it has to be -- all 12 would have to agree
7 on the last one. Anybody doesn't agree, then you
8 don't agree. And you give them the -- Mr. Buntion
9 the benefit of your vote, okay?

10 We talked to everybody about that, and
11 everybody said, "I'm the kind of person that can do
12 that. I will do that. I will not worry how many
13 people are wearing blue today, if that's my vote. I
14 will not do that. I will not succumb to the
15 pressure. I told you in the beginning, I'll answer
16 these issues and I look at this. I won't do it
17 because a police officer was murdered. That doesn't
18 equal the death penalty."

19 I can understand why Pat Lykos suggests
20 to you that it does. And it's the evidence in this
21 case, it does not. It doesn't matter. If it's 12-0,
22 vote, write it in. Or if it's 11 to 1, 10 to 2, or 9
23 to 3, or 8 to 4, you can't answer it "yes," the first
24 three issues. You can't. It's okay if you don't.

25 Let me close. And let me remind you of

1 something. There were two witnesses that testified,
2 and their names were Earl Hicks and Zeke Young, you
3 remember them? They're probably witnesses that the
4 prosecution summarily dismisses. Meaningless
5 testimony in what we're doing. That -- what are
6 they? Just cooks?

7 Oh, Earl Hicks, talked real loud.
8 Remember him? He couldn't hear very well. He was a
9 delightful man. He worked for Shell. God bless him.
10 He worked for Shell and he had a family. He's a
11 educated man, with advanced degrees.

12 And, you know, they didn't witness
13 anything about the crime. They don't give you
14 anything about that. They know that Carl Buntion is
15 guilty. They weren't called to tell you he's not
16 guilty in any way. But, you know, I think they came
17 here to tell you that they see something. And they
18 see something that Mr. Long and Mr. Dozier don't see,
19 or maybe don't want to see.

20 And maybe it's hard for you to see,
21 because you've been involved in looking at the facts
22 of this case and all the details of it. But
23 nevertheless, they were up there and what you could
24 glean from that, is that these are honest and decent
25 and real moral and religious convicted people,

1 weren't they? They really were. And neither of them
2 said, "I don't believe in the death penalty." They
3 do believe in the death penalty, and they both told
4 you. And somehow that got into evidence. They don't
5 believe Carl should be executed. They're not making
6 the decision, you are.

7 But what did they see when they visited
8 Carl? What did they do? They told you. Is they saw
9 a human being. And they saw a man who sinned and
10 they saw a man who's guilty. They told you that.
11 And they saw a man who suffered for years and had
12 been severely punished and will be. And they saw a
13 man who needs forgiveness. And they saw a man who
14 needs mercy, doesn't he?

15 And really what they were telling you
16 is, they saw the least of the least, right there
17 (indicating). He was the least of the least. And
18 they know -- they know that sinners are forgiven and
19 they recognize. They do. They recognize that
20 quality of mercy. They recognize it. They were
21 special people that recognized it.

22 Now, why don't they go feed the hungry?
23 Why are they off doing that? Why aren't they
24 clothing the naked? Why are you visiting people in
25 prison? Why are you doing that? Earl Hicks, that

1 old guy, sweet man. Zeke Young, why are you doing --
2 why aren't you doing some other corporal work of
3 mercy? Have you ever been to prison? Have you ever
4 thought or felt the need to go to the prison to visit
5 somebody that you don't know that's there?

6 They sit here and told you, "I love
7 Carl Buntion. They rarely say that to you. They
8 rarely say to anybody, I love Carl Buntion. Isn't
9 that amazing? They did. I ask you to do something.
10 Before you go make your personal, moral and reasoned
11 decision about taking another human being's life.

12 That before you go back into the jury
13 room, I want you to do one last thing I want you to
14 look at Mr. Buntion. I want you to take the time to
15 look at this man's face. Just look at his face,
16 okay, before you go in. Look in his eyes and you
17 look in his face. You ask yourselves do you see or
18 can you see what Earl Hicks and Zeke Young saw?

19 And when you go back to that room, I
20 want you remember something, as you think about this
21 old man, the least of the least. What you do for the
22 least of my brethren, you do for me. Because that's
23 the truth. It really is.

24 That concludes my statement, Your
25 Honor.

1 THE COURT: Thank you, Mr. Keirnan.
2 Mr. Lance, you may proceed, Mr. Long.

3 STATE'S CLOSING STATEMENT

4 MR. LONG: We've been toying this
5 around like it's a prop. We've used it. We've had
6 people hold it. But keep in mind that what this is
7 in my hand right now is what he used to take their
8 father and her husband.

9 And in that closing argument you just
10 heard, you were like don't let the police officer
11 bully you. They're not here to bully you. He was
12 part of their family, too. And they're here to
13 recognize, all these motorcycle officers, they're
14 here because he was part of them, and to give support
15 for people here. You now all this time it's been,
16 "Poor Carl, Poor Carl, Poor Carl, Poor Carl."

17 Poor Carl gets out of prison. Within
18 six weeks, six weeks of his release early on parole.
19 Which seems to keep happening to him a lot during the
20 course of his prison career, he illegally obtains a
21 gun. Now, how did he get the money, you have to
22 wonder, to get a gun? And he doesn't just go and get
23 any gun. He doesn't go get a .22, he gets a .357.
24 And then he doesn't just get a .357 with bullets, he
25 gets hollow point bullets. As you heard from Kim

1 Downs, designed to enlarge the wound tract and
2 inflict the maximum amount of damage possible.

3 So now, we have -- and I'm doing this,
4 you know, they get up here and they say, "Oh, he's
5 not a continuing threat, look at his record." You
6 know, that would be like me applying for a job and
7 leaving my grades off a resume if they weren't very
8 good. Or leaving out jobs on my resume that I got
9 fired from, and putting in there what I want you to
10 know.

11 And so what I want to go right now as
12 I'm talking about this, is I want you realize what
13 his complete resume is and go, "continuing threat?"
14 Are they really asking you to leave your common sense
15 at the door. So for starters, we're talking about a
16 man, acquired a gun, acquired hollow point bullets,
17 had been released early from prison for sexual
18 assault of a child. And on that fateful date, ran
19 across Officer Irby.

20 And in order to say he's not a
21 continuing threat and not deliberate, we're going to
22 talk about, well, all three shots came with both
23 hands over the hood of the car or that the -- the
24 slope towards the trunk. That's not what happened.
25 He fired like this, and as the witnesses says, he

1 walks around the front and he shoots again. And they
2 want to say, "Oh, I said he was over him."

3 I'd like to have one of them get on the
4 ground and point a loaded gun at them like this and
5 say, "That's not someone firing over them." Really?
6 That's the best they can come up? That this isn't
7 shooting over somebody? Come on.

8 And then what do you know from
9 Dr. Brown? See, we've got the shot to the head and
10 Dr. Brown on cross, the shots, the shooter had to be
11 moving. So now, we have someone deliberately killing
12 a police officer in the daytime.

13 Now, to build that resume to decide
14 whether or not he's a continuing threat or not, oh,
15 no, that's not enough. Because see there's a car
16 over here with these woman screaming, "Oh, Debra,
17 he's got a gun, he's got a gun." Oh, they must have
18 seen what I just did. So I'm going to walk over with
19 that mean face. And imagine this, pointing right
20 over the hood of the car, slightly downward and up,
21 bam.

22 Do you realize how lucky Theresa
23 Clerkley is. So now, we have a man that not just
24 wanted to kill a police officer, didn't just obtain a
25 gun with hollow point bullets, who's now tried to

1 kill a second person. So add that to the resume, man
2 killed? Check. Tried to kill another? Check. Oh,
3 what about someone else? Now, I see another officer
4 running, bam. Tried to kill another police officer?
5 Check. We run down the street, we carjacked Alex
6 Crawford. Carjacking.

7 I mean, do you realize what happened
8 that day? He killed a police officer, he tried to
9 kill a woman, he tried to kill another police
10 officer, he carjacked somebody, he emptied out a
11 complete warehouse full of employees. Pulled a gun
12 on Jose Gutierrez. He screams, all while on parole.
13 Because he's been given a chance.

14 Now, to complete this resume out a
15 little more, we're going to start from the beginning.
16 In 1961, '62, he gets convicted for two theft cases.
17 He gets two years on each case. He does ten month
18 and 11 days. The parole board decided to give him a
19 chance. You know, they talk about we're skilled
20 18-year-old plus veterans. I wasn't even born yet
21 when he started creating his resume as to why he's a
22 continuing threat.

23 Then in 1963, he's convicted of
24 burglary. He's given two years. Oh, got out early
25 again, in one year and 13 days. 1965, assault to

1 murder, he got six years and did two years, one month
2 and 14 days. So, let's go back over to this
3 imaginary board with the resume. Above probably
4 killed police officer, tried to kill a second police
5 officer and tried to kill a woman 25 years earlier;
6 25 years earlier, he tried to kill another police
7 officer.

8 You know, can you imagine walking out
9 in the street and saying, "You know, I just am not
10 sure he's a continuing threat. I mean, I know he
11 killed a cop, I know he's tried to kill two others, I
12 know he tried to kill a woman." So he's tried to
13 kill three, killed one and he's on parole for sexual
14 assault of a child. Not a continuing threat? Yeah,
15 right.

16 Oh, after the assault to murder,
17 burglary, possession of a controlled substance and
18 unlawful injury to property. And if you'll look in
19 those defense exhibits that they admitted, even the
20 defendant admits when questioned as he's going into
21 prison about the parole -- I mean, to prison of what
22 happened, he had an argument with a car owner. So he
23 shot the car up. We have using guns again, now. Do
24 you see this lifetime? It goes on and on and on
25 using guns.

1 And then we go on to commit burglary.
2 Well, for starters we'll look and see he got 10
3 years. For those three offenses, he did 11 months
4 and one day. They keep giving him chance after
5 chance after chance. 1971, we get burglary; paroled
6 again. Got ten years, one month -- four years, one
7 month and 13 days. And it goes on and on. In a
8 burglary of a motor vehicle, he got sentenced to nine
9 years each. Did four years, three month and 23 days.
10 We have UMV and a sexual assault of a child we talked
11 about.

12 But I want you to notice this. The
13 total years sentenced is 105 years. The total
14 consecutive years, because of his sentences ran
15 together, 64 years. And prior to committing --
16 killing Officer Irby, he had only spent 16 years, ten
17 month and 12 days of those 64 years in prison.

18 So now, to add to the resume, we have
19 13 prior felony convictions. And to stay somewhat
20 chronological, I want to point out some packages from
21 some letters the defendant's written. And they like
22 to like, "Oh, well we talk different to different
23 people. And that's really what's going on. It's
24 just a different lingo."

25 These are his thoughts. This is who he

1 is. And this is what he says when someone's not
2 looking. And, you know, at the very end we made this
3 plea for mercy and talked about these ministers who
4 came and visited him, and really they see something
5 in him. You know, what's telling to me as I looked
6 at this letter, dated August 29th of 1990. And
7 everything I'm going to read to you is not just in
8 the same letter, it's in the same paragraph.

9 And that paragraph begins with: I'm
10 reading the Bible I got. And then he goes on to say
11 "Johnny the snitch sent them, so he's in a hell of a
12 wreck if he gets out any time soon. And his ass is
13 grass, so I hear, if he hits TDC. All he's got filed
14 on for him is that bogus possession case. And that's
15 got a no bond to keep him handy for the DA. People
16 in the Louisiana joint are waiting on him to come
17 back on that parole violation charge, so I hear.
18 They're probably -- they'll probably give her that
19 federal protection witness plan deal.

20 Johnny Davenport may testify for me.
21 And his brother is in the Louisiana prison, so I
22 hear. And I also hear that the TS in TDC wants to
23 talk to Johnny. He must have snitched on some
24 Mexicans, too, 'cause I hear, that the Mexican mafia
25 is waiting for him to hit the SA jail and TDC. I

1 hear that the AB in TDC already has a contract out on
2 him. Hell, I heard, even the skinheads here in jail
3 are after him. I just hope Johnny is handcuffed and
4 shackled and all alone in the jail visiting when they
5 get him. And I hope his old lady is sitting there
6 watching it when it goes down, because I hear that
7 Johnny has a lot of enemies everywhere. And it
8 wouldn't surprise me none me none if they get him
9 real soon like. Well, that's the price you pay for
10 being a snitch.

11 Do you realize in the same paragraph,
12 that we start off reading the Bible and then talk
13 about that's the price you pay for being a snitch.
14 That's who he is. He's two-faced. It's all about
15 what can happen for me? What's -- what's good for
16 me? Well, let me just throw this out there. But,
17 "Oh, please give me mercy. I know I've never asked
18 for mercy. I've never said I did anything wrong."

19 In fact, for some reason, he knows
20 about the AB and he must have some connection to the
21 Louisiana and Texas prison systems, that are able to
22 hurt Johnny Killingsworth.

23 Also looking into prison letters. This
24 is August 20th of 1990. But he still talks about,
25 "That snake, Johnny Killingsworth, up here somewhere.

1 Sure hope he hits the farm you at." In a letter to
2 Bobby Buntion, I guess, in theory, that his own
3 brother can help him carry out the removal of Johnny
4 Killingsworth.

5 So now, we've got a man who's killed a
6 police officer, tried to kill two other police
7 officers, tried to kill a woman, 13 prior felony
8 convictions, one of them for sexual assault of a
9 child, another one for shooting up a car. And has
10 now expressed our willingness to take out people who
11 are willing to testify against him. Of which, I
12 might note, a prison inmate did testify against him,
13 so I'm sure he's a little worried right now.

14 Your old lady said Johnny ain't listed
15 here under his real name. I don't know if that's
16 game or not. I went for a motion hearing today and
17 the dude off the seventh floor said Johnny was there
18 in lockup, three cells from him. I gave him my SPN
19 number and told him to give it to Johnny and tell him
20 to write me. But you know how that goes. The punk
21 probably won't write, since the newspaper has
22 mentioned in this week's Post that Johnny signed a
23 statement against me. Hell, we already know that.

24 I told this dude this morning, to tell
25 Johnny, he better think long and hard on taking the

1 stand against me. Because people in TDC and the
2 Louisiana joint are waiting to see what he does.

3 All right. This is 1990. And so you
4 would think, if this man's reformed and he was
5 different now, that his heart might have changed.
6 That this time in prison would call him to think
7 about the things he does and maybe ask for
8 forgiveness? No.

9 I wanted you to call my investigator
10 and set the record straight on all this sexual
11 assault BS, that those whores, Brenda, Rita, Patsy,
12 Patty, Carol, Margaret, Linda, Lucy, et cetera, et
13 cetera, have placed on us. Oh, I forget to mention
14 Melissa Keys.

15 Don't know if Carol, Margaret, Linda,
16 Lucy ever put a jacket on us. But if they were asked
17 to testify for me, they would probably lie about
18 something. Like that time Carol told you that me and
19 her robbed a bank in New Mexico. You know, one has
20 to wonder why they didn't call Rita to the stand.
21 She was here in the courtroom. She grew up in that
22 house. And he's sitting there calling her a whore.

23 MR. KEIRNAN: Judge, I object. The
24 proof is on the State. We're not required to call
25 any witness to the stand.

1 THE COURT: It's overruled.

2 MR. LONG: And he goes on to say. In
3 21 years, I never once expected my own sister to
4 write me a letter. And she hasn't disappointed me.
5 I mean, after you help send your own brother to
6 prison for a crime you know he did not commit, what
7 can you say to him in a letter? I'm sorry? It's not
8 so much the three years of my life I lost, it's the
9 jacket I have to wear for the rest of my life.
10 That's what I mean to my sister, zero. So that's
11 exactly what she means to me, zero.

12 In a way I'm glad that I'll never see
13 the streets again. I'd hate to think what I'd do to
14 certain people that have screwed me around.

15 July 19th, 2011. Not even a year ago.
16 His heart is still thinking about what he wants to do
17 to people who get in his way. They're right down
18 there. He's talking about the man housed next door
19 to him. And this is January the 5th, 2011, and the
20 man next to him in jail, he's lucky I don't beat the
21 hell out of him for waking me up in the middle of the
22 night.

23 All right. We don't stop there. And
24 remember, these are the letters he's writing, knowing
25 he's being watched. Imagine what he's really

1 thinking and how much worse it is. You know, all
2 this talk. Oh, no write-ups, no nothing. We tried
3 to point out to you and Blanton they called, how, you
4 know, it's more hassle than it's worth sometimes.
5 And here we have a letter, April 21st, 2011, talking
6 about the guard, saying, "I went off on the -- on the
7 guards that day, on my last court day."

8 So, we know that in the Harris County
9 jail, he has been going off on the guards, by his own
10 admission. My favorite, May 19th, 2011. Patsy and
11 Brick Mason would make a good pair. He hit his old
12 lady in the head with a brick. Like that's going to
13 kill her. Cause of death, drowning. She couldn't
14 swim with that carpet rolled around her body. He
15 threw her in a ditch and around Lake Houston and it
16 rained. The ditch filled with water, so she drowned.
17 Of course, keeping all that ho's hair in the fridge
18 was a mistake, too. And leaving that bloody brick by
19 the front door wasn't too cool either.

20 And boning his 16-year-old stepdaughter
21 in his wife's bed and getting caught, wasn't too
22 swift either. He should have used the brick on the
23 daughter, when she got a nut and started speaking in
24 tongues. That's what woke the mother up.

25 Okay. There are so many things in just

1 these few sentences here. For starters, we're joking
2 about the murder of a woman, by -- who S.O. Woods
3 said, is the reported captain of the Aryan
4 Brotherhood, who he has a picture of his cell -- in
5 his cell, that he got caught with, okay?

6 So, we are -- allegiance to him. We
7 have respect for him. We wish he would have killed
8 more. We're joking about him boning his 16-year-old
9 daughter. Oh, ironically, he's a sex offender. And
10 during the course of the trial, they tried to ask
11 experts about, well, if you're a sex offender you
12 can't get into the Aryan Brotherhood. Well, that's
13 a big bunch of bahoo we know now, because Billy Mason
14 basically is a sex offender himself.

15 There's no remorse. There's no sorrow.
16 There's no, he shouldn't have killed her. It's, he
17 was stupid and got caught. He didn't cover his
18 tracks enough. See now, Mr. Carl Buntion, I've
19 learned how to cover my tracks.

20 I'm sure the DA will grill you about
21 your past criminal record. But don't go off on her.
22 Just say, "Hey, you folks made me what I am. Because
23 you folks could have given me probation on my first
24 offense. But you folks chose to send me away to
25 prison." That's what I'm going to tell the DA. "If

1 they create a monster, they should not complain when
2 it feeds on society, right?" Right.

3 These two lawyers stood up here and
4 asked you for forgiveness for him. But he's never
5 asked for forgiveness. Do you see on this resume we
6 have, I didn't do anything wrong. I'm right. It's
7 the DA's fault that I'm a monster.

8 Oh, and Caroline already talked about
9 -- and says, all these witnesses who came in here are
10 lying about him because they want to be heroes. Now,
11 again, he trashes his sister. He jokes in a letter
12 to Bobby, man, Hopper Road is bad luck for both of
13 us. Remember that Mexican that sold goats there at
14 Hopper Road and 59. I beat up a black man there and
15 my ring got my finger real bad. There's no, "I'm so
16 sorry. I want forgiveness. I did this bad thing."
17 There's, "I beat up a black man and, you know, it cut
18 my finger. It hurt me. It hurt me."

19 And, you're right, I'm going to play
20 it.

21 (Video plays.)

22 MR. LONG: Second time. Watch it
23 again.

24 (Video plays again.)

25 MR. LONG: Several things there.

1 He thinks he's right. His heart is the
2 same as it was when he tried to kill an officer in
3 the '60s, when he killed Officer Irby. And he still
4 thinks he's right. And notice, back in 1996, you
5 told a colleague of mine you would do it again? Yes.

6 So, we have in '96 he felt that way.
7 In 2009 he feels that way. That -- that video is
8 key. And their only response to it, "Oh, that's
9 right, it came off the news. It's the entertainment
10 industry." Those are his words. Those are not Phil
11 Archer's words. They are not any other reporters'
12 words, they're his words. He put that on the media,
13 knowing this family would have to hear, I'd do it
14 again, basically.

15 Okay. To continue the resume.
16 Dr. Vigen who Mr. Scardino expressed great admiration
17 for, I'd like to point out even he admitted that --
18 well, actually Mr. Scardino said, "Well, they say
19 he's got antisocial personality disorder." "Well,
20 duh." I think that's what he said were his exact
21 words. You heard Dr. Vigen, their own expert,
22 testify from the stand, that a person with antisocial
23 personality disorder into their 50s, will always be a
24 continuing threat. They are the worst of the worst,
25 they are your psychopaths.

1 How can you say that the answer to
2 Issue Number Two, should not be "yes," for a man who
3 killed a police officer; did it in cold blood; tried
4 to kill others; 25 years before that, tried to kill
5 another police officer; sexually assaulted a child;
6 Has 13 prior felony convictions; is a true sociopath
7 -- psychopath, who their own expert admitted that
8 class of people will always be a danger; who has
9 gotten into a fight on death row, despite their
10 saying he's never been in trouble; has been caught
11 with a knife in prison; and is a member of a security
12 threat group called the Aryan Brotherhood, who their
13 own expert said was responsible for extortion and
14 assault and murder and the sex trade and contraband
15 and getting guards on the take.

16 If you think about this with your
17 common sense, a man who has spent his entire life
18 hurting others, his very being is a continuing threat
19 to all of us. He's expressed a willingness to do it
20 again. He said if he gets out, there is more he
21 wants to hurt. He's admitted that he goes off on
22 guards, he's a bigot. His heart is the same as it
23 was when he killed Officer Irby, and he hasn't
24 changed. And for them to come in here and ask for
25 forgiveness for that same heart, for the way it

1 always has been, is disingenuous. If someone like
2 that is not a continuing threat to society, then who
3 is?

4 We talked on voir dire. And Ms. Dozier
5 and I -- and it's no secret that y'all were each in
6 there for about an hour. And we gave lots of
7 examples on continuing threat. And we were talking
8 about the murder of a police officer and, you know,
9 something -- well, the more I think someone who could
10 do that is pretty bad. And we would have to come up
11 with examples.

12 Well, maybe the victim was having an
13 affair with the police officer's wife and taunting
14 him. Or maybe the police officer sexually assaulted
15 the officer's child. Or maybe it was a kid that was
16 19, that was returning from war with posttraumatic
17 stress disorder that had gone undiagnosed. All of
18 you heard at least one of those examples, I believe,
19 if not more.

20 Those are the kinds of things we had to
21 use to get you to think about someone who is not a
22 continuing threat to society that killed a police
23 officer. And none of them are him. Nothing.

24 Deliberate. Contemplates a conscious
25 decision involving a thought process. which embraces

1 more than mere will to engage in the conduct. And
2 Mr. Keirnan gets up here and says, "Oh, it's
3 intentional, because intentional is conscious
4 objective or desire." Well, deliberate is that, too,
5 plus his thought process.

6 And if you think you were tired about
7 hearing about red lights on deliberate, imagine those
8 of us who had to do it with lots of jurors to get a
9 jury. I think all of you had the red light example.
10 Someone who in an instant decides to run a red light.
11 Or I think there were some of you that were opposing
12 fans or fans for opposing football teams, when we
13 were closer in time to the play offs, about stabbing
14 someone mad one time versus doing it several times.
15 Running the red light quickly or being further back
16 and making a thought, a little thought, hit the gas
17 and go. That would be deliberately.

18 Getting out of the car, sneaking down,
19 and you know he snuck, because he didn't want to be
20 detected by the officer coming up on him, bam.
21 Walking around, bam, bam. That's not deliberate?
22 And they want -- wait and the people that called
23 Bobby Buntion want to trash Darlene Brown.

24 What motive does she have to lie?
25 Because 20 something years ago there was a little

1 flowery note that said, Darlene and Johnny? The
2 woman who's been married for 15 years to her husband,
3 lived with him for several years before that, made
4 her husband flight to Houston with her. Gave a
5 statement, telling the police what she knew back
6 then. Came into court again, testified. Her husband
7 had to take the day off work. She wasn't subpoenaed
8 to be here. And in the end, the only thing they got
9 from her is a little flowery note. There were some
10 needles that probably belonged to her boyfriend. And
11 we paid for her plane ticket. And bought her lunch
12 here in Houston. Other than that, why would she lie?

13 It wasn't just deliberate what he did
14 that day. And what he did that day was premeditated.
15 Remember all these witnesses? Elmore Breaux being
16 one of the best. Who got up there and said, he was
17 at intersection for several minutes. They all said
18 how bad the traffic is right there. For several
19 minutes, he sat in the car with this illegally
20 obtained hollow point loaded gun, thinking about what
21 to do. But no, not just that. He had thought days
22 ahead of time. because see, he's the one that made
23 the decision not to go to the halfway house. He's
24 the one that knew he was in big trouble if he caught
25 a gun. So it makes sense that he had tried to

1 decide, how am I going to get out of that situation
2 if it happens?

3 He killed that police officer, because
4 I'm not going back to jail. So now, to add to that
5 resume, too, we have a man that easily thinks about
6 killing people and carrying it out ahead of time.
7 Deliberate. This is way beyond running a red light.
8 You think about what goes through the mind of someone
9 that does these things. Can you ever imagine
10 yourself doing that?

11 So you have to think, what went through
12 his mind? All of the decisions he had to make
13 leading up to killing Officer Irby. The acquiring of
14 the gun, to taking it that day, to loading it, to
15 getting out of the car when he wasn't supposed to, to
16 moving down, the firing over the back, the walking
17 around. Deliberate. Deliberate, continuing threat.

18 Provocation. It's almost a joke that
19 that question is there. I mean, remember the
20 example, I think, we came up. Well, they're having
21 an affair, he's taunting you and maybe that provokes
22 you. What's provocative. What could Irby have done?
23 They want to say that there was provocation because
24 Officer Irby reached for his gun. What would you
25 expect him to do? You know, that's kind of like the

1 kid that kills his parent and then says, "Hey, I'm an
2 orphan, give me a break." He gets out of the car, he
3 pulls the gun. And at the last second Officer Irby
4 tries to save his own life by getting ahold of the
5 gun, bam and down. That's provocation?

6 And while we're at it, we talked a lot
7 about Cody and Cally and Maura. What do you think
8 went through Officer Irby's mind? What was his last
9 thought like on earth. What did he think about? Did
10 he think about, Oh, my God, I'm never going to see my
11 kids again? Did he say, I wish I told them I loved
12 them. I'm never going to see them grow up. What
13 went through his mind? Provocation? Come on.

14 Mitigation. Remember on mitigation we
15 talked, that you look at the crime itself. The
16 circumstances of the offense. And you look at the
17 character and background and who he is and good and
18 bad, where he came from and all those things in
19 deciding whether or not there's something
20 sufficiently mitigating. And some of you gave
21 different examples of things, mental health on your
22 questionnaires, premeditation, lack of criminal
23 history, but mental health was big. Well, we've
24 heard no mental health history problems. We've heard
25 no physical health problems.

1 The only two things that really
2 factually mitigating they brought to you are, he sees
3 a minister that visited him on death row and a
4 minister who visits him in the jail. And my dad was
5 really awful and a monster. The only witness who
6 came in here to talk about how bad the dad was, was
7 his brother Bobby Buntion. And boy what a witness he
8 was. You know, what -- what was head talk? And what
9 was the truth.

10 You know, Bobby comes in here and says
11 my dad killed our dog by having sex with it. I
12 caught him having sex with a pig. Oh, but, yeah, you
13 know, those really awful letters I used to write,
14 where I accused my dad of also sleeping with a
15 9-year-old daughter. And that my -- sorry,
16 9-year-old sister. And that my sister was a slut and
17 wanted it at nine? That was just all head talk. I'm
18 not buying it.

19 They didn't call Rita, the one that's
20 successful. Why not? Why did they call the head
21 talker. The one that's been writing back and forth
22 and saying those hateful things. And even if true,
23 he was 46 years old when he killed Officer Irby; 46
24 years old, a year older than me. And even his own
25 brother said, we knew right from wrong. I knew it

1 was wrong to steal; I knew it was wrong to rob; I
2 knew it was wrong to sexually assault children; and I
3 knew it was wrong to murder. Forty-six years old.

4 And I'm going to point out something
5 while I'm on age. You know, I'm going to bring up
6 here, the undisputable fact, he's 68. His brother to
7 be believed, he was born March 30th of 1944, making
8 him 67 years old. So I'm not going to go along with
9 these being such undisputable facts, when they can't
10 even get the age right, based on the date of birth
11 that was given by their witness, the defendant's
12 brother.

13 It's been a long time. You've been
14 very attentive. I've watched you listen, I've
15 watched you take notes, I've watched you pay
16 attention. And I hope that Ms. Dozier and I have
17 done our best. You know, they attack the DA and,
18 "Oh, the decision to seek the death penalty." You
19 know what? I stand by that decision. And I bet they
20 all do, too. Because there's a reason why we have
21 the death penalty for people who kill police officers
22 in cold blood.

23 Maybe sometime, somewhere, we've made a
24 stand. And the next time someone decides they want
25 to kill a police officer for no reason, they will

1 think about what the consequences are and what's
2 going happen to them. Everyday, they're out there
3 protecting us. And they never know when it's going
4 to be their last.

5 Remember Cody, I said, you know, what
6 goes through your mind when you make traffic stops
7 now. Jim Irby's son is a police officer now. And he
8 says it could all be gone in an instant. They try
9 and make you feel bad. And you're going to see in
10 the newspaper and, you know, "Oh, is this going to be
11 the biggest thing in your life."

12 He's the reason we're here. And they
13 can blame the DA or they can blame the police or they
14 can blame whoever they want to blame. But you should
15 know in your heart, he's why we're here. He has the
16 cold heart. He killed somebody. He's tried to
17 kill -- do you realize, if he had succeeded in
18 killing everybody he tried to kill, he'd be a serial
19 killer. He would have killed four people.

20 Almost 22 years this family has waited
21 for today. This decision is an important one and I
22 don't mean to take it lightly, but they have waited
23 21 plus years. Babies have become adults, and they
24 have been here everyday and they're going to be
25 waiting on you. You will never bring around their --

1 make their pain go away. But one thing you can do is
2 bring them justice. Because the evidence is clear,
3 if you go through these records, if you see what it
4 is, of what he's like.

5 I mean and their own -- their
6 criticisms of us, are we didn't call our prison
7 expert and they told you roam -- roam freely. And --
8 and yet, their own prison expert said, Oh, the
9 defendant married a woman after he got on death row.
10 She got caught trying to smuggle drugs to another
11 inmate.

12 If he's been in prison at least 10
13 years, he's eligible to go to a level two. Level two
14 inmates can live in a dorm or a cellblock. They're
15 eligible for jobs in prison, there's freedom of
16 movement. He then says that all of the inmates who
17 tried to escape the Polunsky unit were in admin
18 segregation. But then the next witness they called,
19 Mr. Blanton says, "Well, they weren't really in it,
20 because there's too many people for us to do it all.
21 And they can walk to chow or clinic." We got it out
22 of their expert.

23 And then they call Vigen. It's his
24 first time to testify about these issues. It's a new
25 study. And I think, even though I had very limited

1 time to go over the study that was given to me that
2 morning, as you heard, I think that some problems
3 were glaring. The studies don't match this
4 defendant. Even according -- Oh, remember, Dr. Vigen
5 said, most criminal acts of violence or crimes are
6 committed by people between the ages of 18 to 26?
7 This defendant's way off the charts for that.

8 Their study's not representative. It
9 over samples 17-year-olds. It only goes to reported
10 acts, okay? If it's not reported, it's not in their
11 study. And, you know, from their own witnesses. You
12 know from Blanton that's often more trouble to write
13 up an inmate than it's worth. You will see in those
14 pen packets that the defendant admitted on a prior
15 prison sentence to getting into a knife fight with
16 another inmate, that never shows up in his
17 disciplinary history. Yet he's admitted to it.

18 And we also know that if we locked up
19 every member of a security threat group and that made
20 them -- why wouldn't the prison be safe? Because
21 they're not locked up like that. I guess, they put
22 in this evidence, I don't know, he's a member of the
23 Aryan Brotherhood.

24 Deliberate. He intentionally did it,
25 he deliberately did it, he contemplated it ahead of

1 time, he thought about it. He decided what he'd do
2 in this situation. Maybe it was relating to his
3 brother being killed by the police. I don't know.
4 But we do know he did it deliberately.

5 Continuing threat to society. You have
6 a man who killed a police officer, who if he had
7 succeeded, would be a serial killing, by killing a
8 second officer -- two other officers and another
9 female. Thirteen prior felony convictions; two of
10 those involving violence, one involving sexual
11 assault of a child. A member of a security threat
12 group, that in the words of their own expert, posed a
13 severe threat to the prison system itself. They do
14 the sex trade, drugs, retaliation, money.

15 We have a man who's gone on TV and says
16 he would do it again and he was justified. He's
17 written letters saying if he ever gets out, there are
18 people he'd like to take care of. He writes letters
19 trying to remove a witness. He writes letters
20 talking about the Aryan Brotherhood. He writes
21 letters that are bigoted. He writes letters trashing
22 his sister, and there's on and on and on. And they
23 want to say someone with that heart and that mind set
24 is not a continuing threat? The answer to Issue
25 Number Two is yes.

1 Provocation. Nothing in this case, has
2 led you believe, other than his fantasy -- fantasy
3 words that, "Officer Irby was in a combat stance."
4 There's no provocation.

5 And mitigating. What could be
6 sufficient? Those of you that I talked to that are
7 on this jury, we talked about sufficiency. And
8 sufficient can go up and down, depending on the
9 brutality of the crime and someone's history and
10 background. That bar, for Carl Wayne Buntion, is
11 taller than me. He has destroyed life, after life,
12 after life, after life, after life.

13 When he's given a chance, he'll
14 terrorize society. You know, fool me once, shame on
15 you. Fool me twice, shame on me. Well, I don't know
16 where we go to for as many times as he's fooled
17 people that they gave him a chance.

18 You knew, when you were put on this
19 jury, that the death penalty was being sought. And
20 each one of you were asked the question, if the
21 answer -- evidence led you to answer those issues
22 "yes, yes, yes, and no," could you do it, knowing
23 that the death penalty would result? And each one of
24 you who are on this jury because you said you could
25 do that.

1 It is time for it to always be about
2 Carl Wayne Buntion. It is time for him to stop
3 taking. It is time for them to get justice. Today's
4 the day. If not him, then who?

5 THE COURT: Thank you, Mr. Long,
6 Ms. Dozier, Mr. Scardino and Mr. Keirnan.

7 Members of the jury, retire to the jury
8 room, pick a foreman, decide about lunch and begin
9 your deliberations.

10 THE BAILIFF: May I approach, Your
11 Honor?

12 THE COURT: Yes.

13 THE BAILIFF: Who are the two
14 alternates?

15 THE COURT: Oh, right. Now, we have
16 two alternates and there's Numbers 184 and 188. And,
17 if you would, raise your hands.

18 THE JUROR: (Jurors comply.)

19 THE COURT: Okay. You are the
20 alternates. You will go to a different room --
21 separate rooms from the jury room. If in the
22 unlikely event a juror of the first 12 becomes unable
23 or incapacitated and cannot continue, then you will
24 take their -- that place of that person. Number 184
25 will be the first alternate. Number 188 will be the

1 second alternate.

2 Remember my instructions I gave you as
3 a jury, individually and now again. Do not discuss
4 the case at all, unless all 12 jurors are in the jury
5 room. Of the alternates, do not discuss the case at
6 all with anyone, until and if you become part of this
7 jury.

8 Alternates and juror members, do not
9 make any independent investigations of whatever
10 nature, of any person, place, thing or location or
11 issue in this case. During your deliberations, you
12 will not talk to anyone, other than the bailiffs.
13 And you buzz the bailiffs, and the foreman writes a
14 note, the note is to be signed by the foreman, given
15 to the bailiff, the bailiff gives it to me and I'll
16 take the appropriate action.

17 Also, if you arrive at a verdict today
18 around 5:30 or 6:00, fine. If you don't, that's fine
19 too. We'll take as much time as is reasonably
20 necessary to render a verdict in this case. Now, if
21 you do not arrive at a verdict by 5:30 or 6:00, you
22 will be sequestered. And you will be taken to a
23 local hotel and spend the evening there. You have no
24 contact with anyone other than the bailiffs, who have
25 you in charge.

1 Cell phones or iPhones, any kind of
2 devices of that nature will be given back to you at
3 the conclusion of this trial. In terms of a family
4 issue, write a note. The bailiff will give me the
5 note and we'll deal with it. But other than that,
6 you will be under these restrictions or under these
7 guidelines until further notice, until this trial is
8 completely over with, actually.

9 So with that, go to the jury room, if
10 you would, select a foreman, decide what you want to
11 do about lunch and begin your deliberations after the
12 lunch break. It's now 1:00 o'clock and if you have
13 any information, buzz. And the foreman will sign any
14 kind of note that I need to look at.

15 Thank you very much. If you would, go
16 with the bailiff, please.

17 THE BAILIFF: All rise for the jury.

18 (Jury exits courtroom.)

19 (Deliberations begin.)

20 THE COURT: Be seated, please. Lunch
21 break will be until about 2:15.

22 (Lunch recess taken.)

23 THE COURT: This is Cause No. 588227,
24 State of Texas versus Carl Wayne Buntion. The record
25 will reflect it's 2:45 p.m. Today's date is

1 March the 5th, 2012.

2 The jury has sent a note. I've styled
3 it on top of this, Note Number One. It's file dated
4 today's date, 1:56 p.m. And it reads as follows:
5 3/5/2012, 1:55 p.m. One, all letters submitted into
6 evidence. Two, prison records. Three, discipline
7 records. Signed -- and it says foreman. I can't
8 read her writing, but it looks like Kathy. Did she
9 write Kathy?

10 MR. SCARDINO: Curry. I think it's
11 Curry, Your Honor.

12 THE COURT: Okay. Thank you. The
13 record will reflect Curry, foreman.

14 And it says, please allow us to review
15 the following items listed above, thank you.

16 Something R. Curry, 3/5/2012. Signed, Steve Curry.

17 Have both sides -- well, I know the
18 defense has seen this.

19 MR. SCARDINO: Yeah, we have seen it,
20 Judge.

21 THE COURT: Has the State viewed this?

22 MR. LONG: I have not. But I have no
23 objection to them receiving any evidence that's been
24 admitted.

25 THE COURT: All right. So we'll

1 consider this as a request that they can see one, two
2 and three requests. No objections?

3 MR. SCARDINO: No objections, Your
4 Honor. Nothing. But I believe that -- what
5 they're -- what I believe the note says what they're
6 asking for are the disciplinary records that we've
7 submitted, that were on all the trips to the
8 penitentiary. And, I believe, the other thing are
9 the penitentiary packets that were submitted by the
10 State of Texas. And -- well, of course, the letters
11 speak for themselves. Is that -- Lance, don't you
12 think you put that over there?

13 MR. LONG: I do.

14 THE COURT: Okay. If y'all both concur
15 on that, then that's -- that is what will happen. Do
16 speak to Ms. Adams here and let her know exactly what
17 y'all agree to. And before it goes to the jury,
18 review it, so they can see it. Also, bring out
19 Mr. Buntion -- Oh, well, do you waive bringing out
20 Mr. Buntion and bringing the jury out in open court
21 and me reading this note number one to them, and
22 responding to them in open court or not?

23 MR. SCARDINO: I would suggest, Your
24 Honor, that just send the stuff back to them without
25 bringing them into the Court. And we sure waive

1 Mr. Buntion's presence during that. If we can do
2 that like that.

3 THE COURT: We can do that.

4 MR. SCARDINO: Also, Your Honor, I
5 haven't had a chance to speak with Lance about --
6 about the alternates. Do you want to cut them loose.
7 Or...

8 MR. LONG: No, I think we need to keep
9 them. We've come this far. I think we've already
10 had two hiccups along the way.

11 THE COURT: Yeah, we don't need more
12 issues. Anyway, so you do waive that?

13 MR. SCARDINO: Yes, sir.

14 THE COURT: All right. Now, y'all
15 talk -- y'all agree to this stuff and make sure that
16 the items requested, Ms. Adams has them.

17 But since we've been talking, there's
18 another note. And I'm going to style on top of it,
19 Note Number Two, reads as follows: 3/5/12. Can we
20 get a fresh breath of air and allow one juror to have
21 a smoke break? File dated, March 5th, 2012,
22 2:43 p.m., signed somebody. And then Steve Curry.

23 MR. KEIRNAN: No. I'm kidding.

24 MR. LONG: That's fine with me. They
25 just can't separate -- they all have to --

1 THE COURT: Yeah, all 12 have to go
2 down.

3 Now, so, do you -- again, as to note
4 number two, waive Mr. Buntion's appearance in court
5 and me bringing the jury out in court and reading
6 this note to them and giving my response in open
7 court?

8 MR. SCARDINO: We do, Your Honor.

9 THE COURT: All right. So the answer
10 to this is -- Note Number Two is:

11 Dear Jurors, yes, you may, but all 12
12 will stay together as a group.

13 Any objections to this response?

14 MR. SCARDINO: None, Your Honor.

15 MR. LONG: No, sir.

16 THE COURT: Okay. And Deputy Johnson
17 or whoever is going to take them down, make sure they
18 stay as a group. Don't lose sight of them. Signed,
19 Judge David Mendoza.

20 One second, we're not done yet. We're
21 not done yet.

22 MR. KEIRNAN: May I address the Court?

23 THE COURT: One second, you may, but
24 one second.

25 File date this, please, my response, as

1 to Note Number Two.

2 Regarding Note Number One. My response
3 is: Dear Jurors, you may have the requested items,
4 one through three, one, two and three, listed above.
5 Signed, David L. Mendoza, Judge, 178th District
6 Court. File date my answer, please.

7 Also attorneys -- trial counsel both
8 sides, review the evidence, y'all agree to it and
9 agree to it on the record, Ms. Adams will give it to
10 the bailiff, bailiff will give it to the jurors.

11 And you want to make something on the
12 report, Mr. Keirnan?

13 MR. KEIRNAN: I do, Your Honor. I
14 request that the Court order Deputy Johnson to take
15 the jurors down to the first floor and out the back.
16 And the reason I do that is because, in the front of
17 the courthouse there's a large presence of police
18 officers' motorcycles lined up as a display --

19 THE COURT: Okay. That's granted.
20 That's granted. That's granted. Anything else?

21 MR. KEIRNAN: That's it.

22 THE COURT: One other thing about the
23 alternate jurors. I've been informed that the two
24 alternate jurors have been in a different room. And
25 any objections to that?

1 MR. LONG: No, sir. I think -- yeah,
2 that's how they have to be kept.

3 MR. SCARDINO: I believe they have to
4 be, too, in a separate room. I was going to agree to
5 let them go home. But they're not ready for that
6 yet.

7 THE COURT: Right. The State does not
8 agree that they be released.

9 Now, one -- one brief thing. Take the
10 12 down, then bring the other two here, where I'm
11 going to put something on the record regarding them.
12 Basically, it's not to talk about the case at all:
13 Don't engage on any impromptu deliberations, okay?

14 THE BAILIFF: Yes, sir.

15 THE COURT: Okay. So if you would...

16 THE BAILIFF: You want the two now,
17 Judge, or afterward?

18 THE COURT: You might as well bring
19 them now. So I can ask them too if they want to take
20 an air break or a smoke break. And they too will
21 be -- if they want to take a break, they'll be
22 escorted by a bailiff, out the backdoor to have a
23 smoke break or get some fresh air.

24 (Alternate jurors enter courtroom.)

25 THE BAILIFF: All rise.

1 THE COURT: Good afternoon. Number 184
2 and 188, I know who you are. We're going to take a
3 break for the other jurors. And we're going to allow
4 you to take a break, as well.

5 During this break and all breaks, don't
6 discuss the case. You're not deliberating, okay? Of
7 course, you're in the same room. You can talk about
8 anything and everything, but not about this case,
9 okay?

10 Some of the jurors -- most of the
11 jurors want to just take a fresh air break and one, I
12 think, wants to take a smoke break. So if you want
13 to take a smoke break, fresh air break, that's your
14 business.

15 But during all breaks, if you're not in
16 a room and -- then you will be in charge -- in the
17 charge of a bailiff. So right now if you want -- if
18 you want to take a break that's your business. If
19 you want to take a break, one of the deputies will
20 take you downstairs, you can have a break. But it
21 will be out of the presence and hearing of any other
22 juror. So the jurors -- 12 over here, and y'all will
23 be somewhere else, okay?

24 Thank you very much for your
25 cooperation. Appreciate it.

1 All right. Until further notice, y'all
2 talk about the exhibits and we'll do that.

3 Remain seated, as Court will stand in
4 recess.

5 (Recess.)

6 MR. SCARDINO: Okay. All right.
7 What's going back is Defense 11, 12, 13, 14, 16, 17,
8 18 and 15. And it's State's 67, 68, 69, 70, 70A, 74,
9 75, 76, 76A, 77, 77A. And then there's also State's
10 114, 115, 116, 117, 118, 119, 120, 121, 127, 128 and
11 129. That's it.

12 (Discussion off the record.)

13 (Deliberations continue.)

14 THE COURT: The record will reflect,
15 the time is 4:15 p.m. Today's date is March 5th,
16 2012.

17 Prior to the lunch break, the jury
18 requested in two notes certain things. Note Number
19 One requested three pieces of -- well, three
20 different requests having to do with different items
21 of evidence admitted into evidence. And Note Number
22 two had to do with having a fresh air break, smoke
23 break.

24 And on the record, I wrote a note
25 responding to both notes. I responded to both notes

1 in writing on the face of those notes. I also asked
2 counsel for both sides to -- to review the note or
3 the items of evidence and whatever they agreed to
4 send the jury -- to send the jury. Everybody
5 concurred.

6 And for the record, I want the record
7 to reflect what notes were tendered to the jury by
8 the bailiff in response to Note Number One from the
9 jury. And Ms. Adams, if you would?

10 And the record will reflect that
11 Ms. Adams tendered to the Court a short note having
12 to do with the exhibits to jury -- well, Note Number
13 One.

14 The State's Exhibits were Number 67,
15 68, 69, 70, 70A, 74, 75, 76, 76A, 77, 77A, 114, 113,
16 116, 117, 118, 119, 120, 121, 127, 128, 129.

17 Both sides agree that's what was
18 tendered to the jury?

19 MR. SCARDINO: Yes, Your Honor.

20 MS. DOZIER: Yes, Your Honor.

21 THE COURT: All right. Thank you. The
22 note -- the list here from the court reporter,
23 Ms. Adams, also reflects that regarding defense
24 exhibits that were tendered to the jury -- were given
25 to the jury, will be Defense Exhibits No. 11, No. 12,

1 No. 13, No. 14, No. 15, No. 16, No. 17, No 18.

2 Both sides concur those are the
3 exhibits from defense that were tendered -- given to
4 the jury for their inspection.

5 MR. KEIRNAN: Yes, Your Honor.

6 MS. DOZIER: Yes, Your Honor.

7 THE COURT: All right. Thank you very
8 much.

9 And counsel, if you would, approach the
10 bench.

11 (Bench Conference.)

12 THE COURT: The record will further
13 reflect that before the jury was retired, the
14 counsel -- defense counsel, Mr. Keirnan and
15 Mr. Scardino were here awaiting counsel Long and
16 Dozier. And somebody showed me a text message or
17 something here in open court. And I reviewed it.
18 And it about three lines or something. And I told
19 defense counsel, I don't know what that means. And I
20 said we'll talk about it when the jury -- when the
21 State's counsel gets here.

22 So what I'd like you to do, if you
23 would, if you still have to show that, to show it to
24 defense -- State's counsel.

25 MR. KEIRNAN: Yes, sir.

1 THE COURT: And y'all look at it and
2 then we're going to talk about it in chambers and go
3 from there.

4 MR. KEIRNAN: It was -- that was -- it
5 was that?

6 THE COURT: I didn't see it. I didn't
7 see that. I thought I saw a text message.

8 MR. KEIRNAN: No. Because it was a
9 text message, that's what I was showing you.

10 THE COURT: Well, it saw something
11 about Lynyrd or Skynyrd or something. Lizard or
12 something. I saw a text. I may have seen that.

13 MR. KEIRNAN: Maybe my thumb pressed
14 something. But it was that. And that I would just
15 say -- that was a --

16 THE COURT: Okay. Well, you may have
17 showed me that, as well. But I don't have my
18 glasses, so I don't know what that is.

19 MR. KEIRNAN: It may have had this or
20 something on it. I don't know.

21 THE COURT: Let me see that. Let me
22 see that again.

23 MR. KEIRNAN: I don't know.

24 THE COURT: Oh, no.

25 MR. KEIRNAN: It wasn't that?

1 THE COURT: Anyway, it was something
2 about Lizard or Skynyrd or something. But anyway, be
3 that as it may.

4 MR. KEIRNAN: All right.

5 THE COURT: I didn't know what it was
6 and we were going to talk about it. So we're talking
7 about it. But at this time I want to talk to counsel
8 about what time we're going to shut down today, et
9 cetera, other issues. And we'll talk in chambers.
10 Remain seated, please. Court stands in
11 recess.

12 (Bench Conference Concluded.)

13 (Off-the-record discussion in
14 chambers.)

15 THE BAILIFF: All rise.

16 THE COURT: Be seated, please.

17 Bring in Mr. Buntion, please.

18 For the record, it's about 5:30 p.m.
19 I'm going to retire the jury for the evening and
20 enter a sequestration order. The record will reflect
21 counsel for State and defense are present, along with
22 the defendant on trial.

23 Bring them in, please.

24 Counsel approach the bench, please.

25 Be seated, please.

1 (Bench Conference.)

2 THE COURT: The bailiff just told me
3 that someone said they're just about to get a
4 verdict.

5 MS. DOZIER: Okay.

6 THE COURT: So we'll wait a little
7 while longer.

8 (Bench Conference Concluded.)

9 THE COURT: All right. Remain seated.
10 The Court stands in recess. Let me know when you
11 have any information.

12 THE BAILIFF: Yes, sir.

13 (Deliberations continue.)

14 THE COURT: Be seated, please.

15 MR. KEIRNAN: Can we wait for
16 Mr. Scardino?

17 THE COURT: Sure.

18 Get the jury ready and don't bring them
19 in until Mr. Scardino and Mr. Keirnan are both at
20 counsel table, please.

21 THE BAILIFF: Yes, sir.

22 THE COURT: The record will reflect
23 counsel for State and defense are both present.

24 Defendant on trial is present in the courtroom, and
25 it's about a quarter till 6:00 p.m. Today's date is

1 March the 5th, 2012. The record will also reflect
2 that Deputy Johnson just informed me that there was
3 misinformation as to the original message to the
4 Court that I gave to counsel both sides.

5 Deputy Johnson. The record will
6 reflect Deputy Johnson's in the courtroom now. And I
7 just informed the lawyers and everyone here in open
8 Court that there was a miscommunication about what
9 you initially told me, and that I gave that
10 information to counsel both sides.

11 But in actuality and, in fact, what did
12 you just tell me right now about the jury -- about
13 the misinformation or miscommunication?

14 THE BAILIFF: The miscommunication,
15 Judge, was the jurors initially thought they were
16 able to reach a verdict. But then they stated that
17 it would take at least an hour or longer. So they're
18 not ready. That's what I heard, anyway.

19 THE COURT: Okay. All right. Thank
20 you. Bring them in, please.

21 (Jury Panel enters courtroom.)

22 (Open court; defendant and jury panel
23 present.)

24 THE COURT: Be seated, please.

25 Good evening members of the jury.

1 Mr. Curry?

2 THE JUROR: Yes, sir.

3 THE COURT: I'm going to enter a
4 sequestration order. You have not arrived at a
5 verdict?

6 THE JUROR: No, sir.

7 THE COURT: And I'm going to enter this
8 order at this time.

9 Cause Number Cause No. 588227, State of
10 Texas versus Carl Buntion, in the 178th District
11 Court of Harris County, Texas, sequestration order to
12 the jury.

13 Since you have not returned a verdict
14 on the jury charge given to you earlier, I must order
15 you sequestered for the evening. While I regret any
16 inconvenience this may cause you, this precaution is
17 necessary to ensure an impartial and unbiased
18 verdict. This evening, Harris County will provide
19 lodgings for you at a local hotel.

20 I now order you to return to your rooms
21 until tomorrow. If you have an emergency, must leave
22 the premises or need to telephone someone outside the
23 hotel, please ask the attending officer for
24 assistance. That will either be Deputy Johnson,
25 Deputy Bronikowski or some other deputy that will be

1 assigned to you.

2 I order you to return to this court
3 tomorrow morning to resume your deliberations.
4 Therefore, you must present yourself to the attending
5 officer in the hotel lobby no later than 8:30 a.m.

6 Do not attempt to violate any of the
7 following instructions:

8 Number one, do not discuss anything
9 about this case or even mention it to anyone. Do not
10 permit anyone to mention it in your hearing. If
11 anyone attempts to discuss the case, report the
12 incident to me or the attending officer at once.

13 Two, do not telephone anyone outside
14 the hotel.

15 Three, do not make any private
16 investigation about the facts of this case.

17 Four, do not tell other jurors about
18 your personal experiences or those of another person
19 or relate any special information. To tell the other
20 jurors would be a violation of these instructions.

21 Five, do not seek information contained
22 in law books, dictionaries, public or private records
23 or in any other medium that has not been admitted
24 into evidence.

25 Six, do not watch the news on

1 television.

2 Seven, do not read the newspaper.

3 Eight, do not listen to the news on the
4 radio.

5 Nine, do not read the news on the
6 internet.

7 Ten, do not leave the hotel premises.

8 Eleven, do not e-mail.

9 Twelve, do not Tweet.

10 If you attempt to disobey any of these
11 instructions, I authorize the attending officer to
12 bring you before me immediately, so that you may show
13 me why you should not be held in contempt of Court.
14 If you are found in contempt, this Court is
15 authorized to fine you up to \$500 and sentence you up
16 to six months in jail.

17 While the Court regrets the severity of
18 this order, it's purpose is to ensure the integrity
19 of the judicial process in this important case. On
20 behalf of the parties and Harris County, I thank you
21 for your assistance and cooperation.

22 Signed, David L. Mendoza, Judge,
23 Presiding Judge.

24 Breakfast details will be discussed by
25 the officer who has you in charge. And as far as

1 your phones and iPads and iPhones, we have those.

2 THE JUROR: Yes, sir.

3 THE COURT: So have a good evening.

4 We'll see you tomorrow around 9:00 o'clock or so.

5 And until that time, have a good evening and do not
6 discuss the case. Of course, only discuss when all
7 12 of you are present in the court -- in the jury
8 assembly room. The two alternates, of course, this
9 applies to you all, as well, the sequestration order
10 and the requirements thereof.

11 Have a good evening. We'll see you
12 tomorrow.

13 THE BAILIFF: All rise for the jury.

14 (Jury exits courtroom.)

15 THE COURT: Can you file date this,
16 please?

17 Be seated please, 9:00 o'clock.

18 (Court adjourned.)

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1 STATE OF TEXAS

2 COUNTY OF HARRIS

3

4 I, Tammy L. Adams, Official Court Reporter
5 in and for the 178th District Court of Harris, State
6 of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription
8 of all portions of evidence and other proceedings
9 requested in writing by counsel for the parties to
10 be included in this volume of the Reporter's Record
11 in the above-styled and numbered cause, all of which
12 occurred in open court or in chambers and were
13 reported by me.

14 I further certify that this Reporter's
15 Record of the proceedings truly and correctly
16 reflects the exhibits, if any, offered by the
17 respective parties.

18 I further certify that the total cost for
19 the preparation of this Reporter's Record is (See
20 Volume 50), and was paid by Harris County.

21

22 WITNESS MY OFFICIAL HAND this the 30th day
23 of October, 2012.

24

25

/s/Tammy L. Adams

Tammy L. Adams, CSR
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Official Court Reporter
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Harris County, Texas
1201 Franklin, 19th Floor
Houston, Texas 77002
Telephone: 713/755-0880
Expiration: 12/31/14

TAMMY L. ADAMS, CSR
OFFICIAL COURT REPORTER
178TH DISTRICT COURT

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